

## **HIGHLIGHTS OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### **INCOME TAX**

#### **T.D. 9240, page 454.**

#### **REG-106418-05, page 461.**

Final, temporary, and proposed regulations under section 954 of the Code contain rules for determining whether a controlled foreign corporation's (CFC's) distributive share of partnership income is excluded from foreign personal holding company income under the exception contained in section 954(i) (active insurance exception). These regulations will affect CFCs that are qualified insurance companies, as defined in section 953(e)(3), that have an interest in a partnership, and U.S. shareholders of such CFCs.

#### **T.D. 9241, page 427.**

Final regulations under section 671 of the Code define widely held fixed investment trusts, clarify the reporting obligations of the trustees and the middlemen connected with these trusts, and provide for communication of tax information to beneficial owners of trust interests.

#### **T.D. 9242, page 422.**

Final regulations under section 368 of the Code define the term statutory merger or consolidation as used in the Internal Revenue Code. The regulations remove the requirement in temporary regulations that transactions must be carried out under domestic law in order to qualify as a statutory merger or consolidation. The regulations also provide that a transaction may qualify even if it involves foreign entities. They also provide a special rule that addresses the qualification as a statutory merger or consolidation of a transaction involving certain entities that are disregarded as entities separate from their corporate owners for federal income tax purposes.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2006-13, page 462.**

Flo-Ro Management of Florissant, MO, no longer qualifies as an organization to which contributions are deductible under section 170 of the Code.

### **ADMINISTRATIVE**

#### **Notice 2006-11, page 457.**

The Service is suspending certain requirements under section 42 of the Code for low-income housing credit projects in the United States as a result of the devastation caused by Hurricane Rita.

#### **Notice 2006-12, page 458.**

This notice supplements the relief previously granted by the IRS with respect to taxpayers affected by Hurricanes Katrina and Rita. It provides relief from certain backup withholding obligations under section 3406 of the Code due to notification that a payee's taxpayer identification number is incorrect. Pursuant to the authority of section 7508A, the IRS postpones the time for certain payors to send notices to payees, and to begin imposing backup withholding on reportable payments to such payees.

Finding Lists begin on page ii.



# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 368.—Definitions Relating to Corporate Reorganizations

26 CFR 1.368-2: Definition of terms.

### T.D. 9242

#### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Statutory Mergers and Consolidations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that define the term *statutory merger or consolidation* as that term is used in section 368(a)(1)(A) of the Internal Revenue Code, concerning corporate reorganizations. These final regulations affect corporations engaging in statutory mergers and consolidations, and their shareholders.

DATES: *Effective Date:* These regulations are effective January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Richard M. Heinecke, at (202) 622-7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

The Internal Revenue Code of 1986 (Code) provides for general nonrecognition treatment for reorganizations described in section 368 of the Code. Section 368(a)(1)(A) provides that the term reorganization includes a *statutory merger or consolidation*. On January 24, 2003, the IRS and Treasury Department published temporary regulations (T.D. 9038, 2003-1 C.B. 524) in the **Federal Register** (68 FR 3384) (the 2003 temporary regulations), along with a notice of proposed

rulemaking by cross-reference to the temporary regulations (REG-126485-01, 2003-1 C.B. 542) (the 2003 proposed regulations), defining *statutory merger or consolidation*. The 2003 temporary regulations generally provide that a statutory merger or consolidation is a transaction effected pursuant to the laws of the United States or a State or the District of Columbia, in which, as a result of the operation of such laws, all of the assets and liabilities of the target corporation are acquired by the acquiring corporation and the target corporation ceases its separate legal existence for all purposes. Under the 2003 temporary regulations, the merger of a target corporation into a limited liability company that is disregarded as a separate entity from the acquiring corporation for Federal income tax purposes may qualify as a statutory merger or consolidation.

No public hearing regarding the 2003 proposed regulations was requested or held. Nonetheless, a number of comments were received.

As described above, under the 2003 temporary regulations, a transaction can only qualify as a statutory merger or consolidation if the transaction is effected “pursuant to the laws of the United States, or a State or the District of Columbia.” Given that many foreign jurisdictions have merger or consolidation statutes that operate in material respects like those of the states, on January 5, 2005, the IRS and Treasury Department proposed regulations (the 2005 proposed regulations) containing a revised definition of statutory merger or consolidation that allows transactions effected pursuant to the statutes of a foreign jurisdiction or of a United States possession to qualify as a statutory merger or consolidation (REG-117969-00, 2005-7 I.R.B. 533 [70 FR 746]). Simultaneously with the publication of the 2005 proposed regulations, the IRS and Treasury Department published a notice of proposed rulemaking (REG-125682-01, 2005-7 I.R.B. 536) proposing amendments to the regulations under sections 358, 367, and 884 to reflect that, under the 2005 proposed regulations, a transaction involving a foreign entity and a transaction effected pursuant to the

laws of a foreign jurisdiction may qualify as a statutory merger or consolidation (the foreign regulations).

#### Explanation of Provisions

The IRS and Treasury Department have received comments regarding the 2005 proposed regulations and the foreign regulations. This Treasury decision adopts the 2005 proposed regulations as final regulations, with certain technical changes. The foreign regulations are adopted as final regulations in a separate Treasury decision. The following sections describe a number of the most significant comments received with respect to the 2003 proposed regulations and the 2005 proposed regulations and the extent to which they have been adopted in the final regulations.

##### A. State Law Conversions

A number of commentators have questioned whether under the 2003 temporary regulations a transaction involving a state law conversion of a corporation into a limited liability company that is disregarded as an entity separate from its owner for Federal income tax purposes can qualify as a statutory merger or consolidation under section 368(a)(1)(A). For example, suppose A, a corporation, acquires all of the stock of T, a corporation, in exchange for consideration 50 percent of which is A voting stock and 50 percent of which is cash. As part of an integrated transaction, immediately after the stock acquisition, T files a form with the secretary of state of its state of organization to convert its form of organization from a corporation to a limited liability company. Some commentators have suggested that the conversion of T into a single member limited liability company disregarded as an entity separate from A should be treated like the merger of T into a pre-existing single member limited liability company that is disregarded as an entity separate from A. In the latter case, the overall transaction may qualify as a statutory merger or consolidation of T into A under the 2003 temporary regulations. Commentators have suggested that there is no policy reason to require T to actually merge into the entity that is disre-

garded as separate from A for A's acquisition of the T assets to qualify as a statutory merger or consolidation. Although the conversion does not involve the fusion under state or local law of a target corporation into a pre-existing entity, it is similar to a statutory merger in that it accomplishes simultaneously the transfer for Federal income tax purposes of all of the assets of the target corporation to the acquiring corporation and the elimination for Federal income tax purposes of the target corporation as a corporation.

A similar question arises when the target corporation is an eligible entity under §301.7701-3(a), rather than a *per se* corporation, and the status of the target for Federal income tax purposes is changed through an Entity Classification Election under §301.7701-3 rather than through a conversion under state law. In this case, no action under state or local law effects the transfer of the assets of the target corporation to the acquiring corporation. Nevertheless, the election also accomplishes the simultaneous transfer for Federal income tax purposes of all of the assets of the target corporation to the acquiring corporation and the elimination for Federal income tax purposes of the target corporation as a corporation.

As described above, the 2003 temporary regulations provide that a transaction can only qualify as a statutory merger or consolidation if the target corporation ceases its separate legal existence for all purposes. The final regulations retain this requirement. In a conversion, the target corporation's legal existence does not cease to exist under state law. Its legal existence continues in a different form. Therefore, a stock acquisition of a target corporation followed by the conversion of the target corporation from a corporation to a limited liability company under state law cannot qualify as a statutory merger or consolidation under these final regulations. Consequently, pending further consideration of this issue, these final regulations clarify that such an acquisition cannot qualify as a statutory merger or consolidation.

Nevertheless, the IRS and Treasury Department are considering whether a stock acquisition followed by a conversion of the acquired corporation to an entity disregarded as separate from its corporate owner, and whether a stock acquisition

followed by a change in the entity classification of the acquired entity from a corporation to an entity disregarded as separate from its corporate owner, should be permitted to qualify as a statutory merger or consolidation. The IRS and Treasury Department are interested in receiving comments in this regard. In addition, the IRS and Treasury Department are interested in comments regarding what implications, if any, permitting these two-step transactions to qualify as a statutory merger or consolidation would have on Revenue Ruling 67-274, 1967-2 C.B. 141 (ruling that an acquisition of stock of a target corporation followed by a liquidation of the target corporation qualified as a reorganization under section 368(a)(1)(C)) and Revenue Ruling 72-405, 1972-2 C.B. 217 (ruling that a forward triangular merger of a subsidiary of an acquiring corporation followed by a liquidation of the subsidiary qualified as a reorganization under section 368(a)(1)(C)).

#### *B. Existence and Composition of the Transferee Unit*

The 2003 proposed regulations generally require that, in order for a transaction to qualify as a statutory merger or consolidation, all of the assets and liabilities of each member of the transferor combining unit become the assets and liabilities of one or more members of one other combining unit (the transferee unit). For this purpose, a combining unit is a combining entity and all of its disregarded entities and a combining entity is a business entity that is a corporation (as defined in §301.7701-2(b)) that is not a disregarded entity). As described above, the definition of statutory merger or consolidation allows for the possibility that a merger of a corporation into an entity disregarded as an entity separate from an acquiring corporation could qualify as a statutory merger or consolidation.

One commentator stated that while it is clear that the existence and composition of the transferor unit are tested only immediately before the transaction and that the existence and composition of the transferee unit are tested immediately after the transaction, it is not clear whether the existence and composition of the transferee unit are tested immediately prior to the transaction. This ambiguity, the commentator argued, creates uncertainty as to whether

the following transaction can qualify as a statutory merger or consolidation: A and T, both corporations, together own all of the membership interests in P, a limited liability company that is treated as a partnership for Federal income tax purposes. T merges into P. In the merger, the shareholders of T exchange their T stock for A stock. As a result of the merger, P becomes an entity that is disregarded as an entity separate from A. If the existence and composition of the transferee unit were tested only after the transaction, the transaction could qualify as a statutory merger or consolidation. However, if the existence and composition of the transferee unit were tested both before and after the transaction, the transaction would not qualify for tax-free treatment because, before the merger, P is not a member of the transferee unit because it is not treated as an entity that is disregarded as an entity separate from A for Federal income tax purposes.

The IRS and Treasury Department believe that the transaction described should qualify as a statutory merger or consolidation. Accordingly, these final regulations include an example that illustrates that the existence and composition of the transferee unit is not tested immediately prior to the transaction but instead is only tested immediately after the transaction. Therefore, the merger of T into P may qualify as a statutory merger or consolidation. Moreover, A would be a party to the reorganization, permitting nonrecognition under the operative reorganization provisions of subchapter C of the Code.

Treating the merger of T into P as a reorganization raises questions as to the tax consequences of the transaction to the parties, including whether gain or loss may be recognized under the partnership rules of subchapter K as a result of the termination of P. Similar questions are raised in a merger of T directly into A that qualifies as a reorganization where, in the transaction, P becomes disregarded as an entity separate from A for Federal income tax purposes. The IRS and Treasury Department are considering the tax consequences in these cases, including the extent to which the principles of Revenue Ruling 99-6 apply in these situations and, if they do apply, their consequences. The IRS and Treasury Department request comments in this regard.

## C. Consolidations and Amalgamations

Questions have arisen regarding the application of the definition of statutory merger or consolidation to transactions that are effected under state law consolidation statutes and foreign law amalgamation statutes. In a state law consolidation and a foreign law amalgamation, typically, two or more corporations combine and continue in the resulting entity, which is a new corporation that is formed in the consolidation transaction. Some commentators have asked whether a consolidation or an amalgamation can qualify as a statutory merger or consolidation under section 368(a)(1)(A) if effected pursuant to a law that provides that the consolidating or amalgamating corporations continue as one corporation in the resulting corporation. Those commentators are concerned that, because the existence of each of the consolidating corporations or amalgamating corporations continues in the resulting corporation, the requirement that the transferee corporation cease its separate legal existence for all purposes may not be satisfied.

The IRS and Treasury Department believe that the fact that the existence of the consolidating or amalgamating corporations continues in the resulting corporation will not prevent a consolidation from qualifying as a statutory merger or consolidation under the 2003 temporary regulations. The 2003 temporary regulations require that the separate legal existence of the target corporation ceases. In a consolidation or an amalgamation, even if the governing law provides that the existence of the consolidating or amalgamating entities continues in the resulting corporation, the separate legal existence of the consolidating or amalgamating entities does in fact cease. Therefore, the IRS and Treasury Department do not believe that the fact that the existence of the consolidating or amalgamating entities continues in the resulting corporation prevents a consolidation or an amalgamation from qualifying as a statutory merger or consolidation.

Other commentators have questioned whether a consolidation or amalgamation of two operating corporations can involve a reorganization under section 368(a)(1)(F) with respect to one and a reorganization under section 368(a)(1)(A) with respect to the other. For example,

suppose that X and Y, both operating corporations, consolidate pursuant to state law. In the consolidation, X and Y result in Z, a new corporation. The shareholders of X and Y surrender their X and Y stock, respectively, in exchange for Z stock. Some commentators have suggested that the consolidation could be viewed as a transfer by X of its assets and liabilities to Z in a reorganization under section 368(a)(1)(F) followed by a merger of Y into Z in a reorganization under section 368(a)(1)(A). Alternatively, it could be viewed as a transfer by Y of its assets and liabilities to Z in a reorganization under section 368(a)(1)(F) followed by a merger of X into Z in a reorganization under section 368(a)(1)(A). The IRS and Treasury Department intend to further study this issue in connection with their separate study of reorganizations under section 368(a)(1)(F).

Questions have also arisen regarding the application of the definition of statutory merger or consolidation to triangular transactions involving consolidations and amalgamations. For example, suppose that A seeks to acquire both X and Y, each in exchange for consideration that is 50 percent A voting stock and 50 percent cash. Under state law, X and Y consolidate into Z, a corporation that results from the acquisition transaction as a wholly owned subsidiary of A. The IRS and Treasury Department believe that a triangular consolidation or amalgamation should be tested under the reorganization rules as a forward triangular merger of each of the consolidating or amalgamating corporations into a wholly owned subsidiary of the parent corporation. Such a transaction might qualify as a statutory merger or consolidation pursuant to the rules of section 368(a)(2)(D). The IRS and Treasury Department recognize that in triangular consolidations and triangular amalgamations, the corporation the stock of which is used in the transaction (A) does not control the acquiring corporation (Z) immediately before the transaction. Nonetheless, the IRS and Treasury Department do not believe that section 368(a)(2)(D) requires the corporation the stock of which is used in the transaction to control the acquiring corporation immediately prior to the transaction and that such corporation's control of the acquiring corporation immediately after the transaction is sufficient to satisfy that require-

ment of section 368(a)(2)(D). Therefore, these final regulations include an example that illustrates the application of section 368(a)(2)(D) to a triangular amalgamation.

## SPECIAL ANALYSIS

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Drafting Information

The principal author of these final regulations is Richard M. Heinecke of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:  
Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.368-2 is amended by revising paragraph (b)(1) to read as follows:

#### §1.368-2 Definition of terms.

\* \* \* \* \*

(b)(1)(i) *Definitions.* For purposes of this paragraph (b)(1), the following terms shall have the following meanings:

(A) *Disregarded entity.* A disregarded entity is a business entity (as defined in

§301.7701-2(a) of this chapter) that is disregarded as an entity separate from its owner for Federal income tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for Federal income tax purposes, a corporation (as defined in §301.7701-2(b) of this chapter) that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)).

(B) *Combining entity.* A combining entity is a business entity that is a corporation (as defined in §301.7701-2(b) of this chapter) that is not a disregarded entity.

(C) *Combining unit.* A combining unit is composed solely of a combining entity and all disregarded entities, if any, the assets of which are treated as owned by such combining entity for Federal income tax purposes.

(ii) *Statutory merger or consolidation generally.* For purposes of section 368(a)(1)(A), a statutory merger or consolidation is a transaction effected pursuant to the statute or statutes necessary to effect the merger or consolidation, in which transaction, as a result of the operation of such statute or statutes, the following events occur simultaneously at the effective time of the transaction —

(A) All of the assets (other than those distributed in the transaction) and liabilities (except to the extent such liabilities are satisfied or discharged in the transaction or are nonrecourse liabilities to which assets distributed in the transaction are subject) of each member of one or more combining units (each a transferor unit) become the assets and liabilities of one or more members of one other combining unit (the transferee unit); and

(B) The combining entity of each transferor unit ceases its separate legal existence for all purposes; provided, however, that this requirement will be satisfied even if, under applicable law, after the effective time of the transaction, the combining entity of the transferor unit (or its officers, directors, or agents) may act or be acted against, or a member of the transferee unit (or its officers, directors, or agents) may act or be acted against in the name of the combining entity of the transferor unit, provided that such actions relate to assets

or obligations of the combining entity of the transferor unit that arose, or relate to activities engaged in by such entity, prior to the effective time of the transaction, and such actions are not inconsistent with the requirements of paragraph (b)(1)(ii)(A) of this section.

(iii) *Examples.* The following examples illustrate the rules of paragraph (b)(1) of this section. In each of the examples, except as otherwise provided, each of R, V, Y, and Z is a C corporation. X is a domestic limited liability company. Except as otherwise provided, X is wholly owned by Y and is disregarded as an entity separate from Y for Federal income tax purposes. The examples are as follows:

*Example 1. Divisive transaction pursuant to a merger statute.* (i) *Facts.* Under State W law, Z transfers some of its assets and liabilities to Y, retains the remainder of its assets and liabilities, and remains in existence for Federal income tax purposes following the transaction. The transaction qualifies as a merger under State W corporate law.

(ii) *Analysis.* The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section because all of the assets and liabilities of Z, the combining entity of the transferor unit, do not become the assets and liabilities of Y, the combining entity and sole member of the transferee unit. In addition, the transaction does not satisfy the requirements of paragraph (b)(1)(ii)(B) of this section because the separate legal existence of Z does not cease for all purposes. Accordingly, the transaction does not qualify as a statutory merger or consolidation under section 368(a)(1)(A).

*Example 2. Merger of a target corporation into a disregarded entity in exchange for stock of the owner.*

(i) *Facts.* Under State W law, Z merges into X. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z become the assets and liabilities of X and Z's separate legal existence ceases for all purposes. In the merger, the Z shareholders exchange their stock of Z for stock of Y.

(ii) *Analysis.* The transaction satisfies the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to State W law and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, become the assets and liabilities of one or more members of the transferee unit that is comprised of Y, the combining entity of the transferee unit, and X, a disregarded entity the assets of which Y is treated as owning for Federal income tax purposes, and Z ceases its separate legal existence for all purposes. Accordingly, the transaction qualifies as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

*Example 3. Merger of a target S corporation that owns a QSub into a disregarded entity.* (i) *Facts.* The facts are the same as in *Example 2*, except that Z is an S corporation and owns all of the stock of U, a QSub.

(ii) *Analysis.* The deemed formation by Z of U pursuant to §1.1361-5(b)(1) (as a consequence of

the termination of U's QSub election) is disregarded for Federal income tax purposes. The transaction is treated as a transfer of the assets of U to X, followed by X's transfer of these assets to U in exchange for stock of U. See §1.1361-5(b)(3) *Example 9*. The transaction will, therefore, satisfy the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to State W law and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z and U, the sole members of the transferor unit, become the assets and liabilities of one or more members of the transferee unit that is comprised of Y, the combining entity of the transferee unit, and X, a disregarded entity the assets of which Y is treated as owning for Federal income tax purposes, and Z ceases its separate legal existence for all purposes. Moreover, the deemed transfer of the assets of U in exchange for U stock does not cause the transaction to fail to qualify as a statutory merger or consolidation. See §368(a)(2)(C). Accordingly, the transaction qualifies as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

*Example 4. Triangular merger of a target corporation into a disregarded entity.* (i) *Facts.* The facts are the same as in *Example 2*, except that V owns 100 percent of the outstanding stock of Y and, in the merger of Z into X, the Z shareholders exchange their stock of Z for stock of V. In the transaction, Z transfers substantially all of its properties to X.

(ii) *Analysis.* The transaction is not prevented from qualifying as a statutory merger or consolidation under section 368(a)(1)(A), provided the requirements of section 368(a)(2)(D) are satisfied. Because the assets of X are treated for Federal income tax purposes as the assets of Y, Y will be treated as acquiring substantially all of the properties of Z in the merger for purposes of determining whether the merger satisfies the requirements of section 368(a)(2)(D). As a result, the Z shareholders that receive stock of V will be treated as receiving stock of a corporation that is in control of Y, the combining entity of the transferee unit that is the acquiring corporation for purposes of section 368(a)(2)(D). Accordingly, the merger will satisfy the requirements of section 368(a)(2)(D).

*Example 5. Merger of a target corporation into a disregarded entity owned by a partnership.* (i) *Facts.* The facts are the same as in *Example 2*, except that Y is organized as a partnership under the laws of State W and is classified as a partnership for Federal income tax purposes.

(ii) *Analysis.* The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section. All of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, do not become the assets and liabilities of one or more members of a transferee unit because neither X nor Y qualifies as a combining entity. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

*Example 6. Merger of a disregarded entity into a corporation.* (i) *Facts.* Under State W law, X merges into Z. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of X (but not the assets and liabilities of Y other than those of X) become the assets and liabilities of Z and X's separate legal existence ceases for all purposes.

(ii) *Analysis*. The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section because all of the assets and liabilities of a transferor unit do not become the assets and liabilities of one or more members of the transferee unit. The transaction also does not satisfy the requirements of paragraph (b)(1)(ii)(B) of this section because X does not qualify as a combining entity. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

*Example 7. Merger of a corporation into a disregarded entity in exchange for interests in the disregarded entity.* (i) *Facts*. Under State W law, Z merges into X. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z become the assets and liabilities of X and Z's separate legal existence ceases for all purposes. In the merger of Z into X, the Z shareholders exchange their stock of Z for interests in X so that, immediately after the merger, X is not disregarded as an entity separate from Y for Federal income tax purposes. Following the merger, pursuant to §301.7701-3(b)(1)(i) of this chapter, X is classified as a partnership for Federal income tax purposes.

(ii) *Analysis*. The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section because immediately after the merger X is not disregarded as an entity separate from Y and, consequently, all of the assets and liabilities of Z, the combining entity of the transferor unit, do not become the assets and liabilities of one or more members of a transferee unit. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

*Example 8. Merger transaction preceded by distribution.* (i) *Facts*. Z operates two unrelated businesses, Business P and Business Q, each of which represents 50 percent of the value of the assets of Z. Y desires to acquire and continue operating Business P, but does not want to acquire Business Q. Pursuant to a single plan, Z sells Business Q for cash to parties unrelated to Z and Y in a taxable transaction, and then distributes the proceeds of the sale *pro rata* to its shareholders. Then, pursuant to State W law, Z merges into Y. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z related to Business P become the assets and liabilities of Y and Z's separate legal existence ceases for all purposes. In the merger, the Z shareholders exchange their Z stock for Y stock.

(ii) *Analysis*. The transaction satisfies the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to State W law and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, become the assets and liabilities of Y, the combining entity and sole member of the transferee unit, and Z ceases its separate legal existence for all purposes. Accordingly, the transaction qualifies as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

*Example 9. State law conversion of target corporation into a limited liability company.* (i) *Facts*. Y acquires the stock of V from the V shareholders in exchange for consideration that consists of 50 percent voting stock of Y and 50 percent cash. Immediately

after the stock acquisition, V files the necessary documents to convert from a corporation to a limited liability company under State W law. Y's acquisition of the stock of V and the conversion of V to a limited liability company are steps in a single integrated acquisition by Y of the assets of V.

(ii) *Analysis*. The acquisition by Y of the assets of V does not satisfy the requirements of paragraph (b)(1)(ii)(B) of this section because V, the combining entity of the transferor unit, does not cease its separate legal existence. Although V is an entity disregarded from its owner for Federal income tax purposes, it continues to exist as a juridical entity after the conversion. Accordingly, Y's acquisition of the assets of V does not qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

*Example 10. Dissolution of target corporation.* (i) *Facts*. Y acquires the stock of Z from the Z shareholders in exchange for consideration that consists of 50 percent voting stock of Y and 50 percent cash. Immediately after the stock acquisition, Z files a certificate of dissolution pursuant to State W law and commences winding up its activities. Under State W dissolution law, ownership and title to Z's assets does not automatically vest in Y upon dissolution. Instead, Z transfers assets to its creditors in satisfaction of its liabilities and transfers its remaining assets to Y in the liquidation stage of the dissolution. Y's acquisition of the stock of Z and the dissolution of Z are steps in a single integrated acquisition by Y of the assets of Z.

(ii) *Analysis*. The acquisition by Y of the assets of Z does not satisfy the requirements of paragraph (b)(1)(ii) of this section because Y does not acquire all of the assets of Z as a result of Z filing the certificate of dissolution or simultaneously with Z ceasing its separate legal existence. Instead, Y acquires the assets of Z by reason of Z's transfer of its assets to Y. Accordingly, Y's acquisition of the assets of Z does not qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

*Example 11. Merger of corporate partner into a partnership.* (i) *Facts*. Y owns an interest in X, an entity classified as a partnership for Federal income tax purposes, that represents a 60 percent capital and profits interest in X. Z owns an interest in X that represents a 40 percent capital and profits interest. Under State W law, Z merges into X. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z become the assets and liabilities of X and Z ceases its separate legal existence for all purposes. In the merger, the Z shareholders exchange their stock of Z for stock of Y. As a result of the merger, X becomes an entity that is disregarded as an entity separate from Y for Federal income tax purposes.

(ii) *Analysis*. The transaction satisfies the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to State W law and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, become the assets and liabilities of one or more members of the transferee unit that is comprised of Y, the combining entity of the transferee unit, and X, a disregarded entity the assets of which Y is treated as owning for Federal income tax purposes immediately after the transaction, and Z ceases its separate legal existence for all purposes. Accord-

ingly, the transaction qualifies as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

*Example 12. State law consolidation.* (i) *Facts*. Under State W law, Z and V consolidate. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z and V become the assets and liabilities of Y, an entity that is created in the transaction, and the existence of Z and V continues in Y. In the consolidation, the Z shareholders and the V shareholders exchange their stock of Z and V, respectively, for stock of Y.

(ii) *Analysis*. With respect to each of Z and V, the transaction satisfies the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to State W law and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z and V, respectively, each of which is the combining entity of a transferor unit, become the assets and liabilities of Y, the combining entity and sole member of the transferee unit, and Z and V each ceases its separate legal existence for all purposes. Accordingly, the transaction qualifies as the statutory merger or consolidation of each of Z and V into Y for purposes of section 368(a)(1)(A).

*Example 13. Transaction effected pursuant to foreign statutes.* (i) *Facts*. Z and Y are entities organized under the laws of Country Q and classified as corporations for Federal income tax purposes. Z and Y combine. Pursuant to statutes of Country Q the following events occur simultaneously: all of the assets and liabilities of Z become the assets and liabilities of Y and Z's separate legal existence ceases for all purposes.

(ii) *Analysis*. The transaction satisfies the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to statutes of Country Q and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z, the combining entity of the transferor unit, become the assets and liabilities of Y, the combining entity and sole member of the transferee unit, and Z ceases its separate legal existence for all purposes. Accordingly, the transaction qualifies as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

*Example 14. Foreign law amalgamation using parent stock.* (i) *Facts*. Z and V are entities organized under the laws of Country Q and classified as corporations for Federal income tax purposes. Z and V amalgamate. Pursuant to statutes of Country Q, the following events occur simultaneously: all the assets and liabilities of Z and V become the assets and liabilities of R, an entity that is created in the transaction and that is wholly owned by Y immediately after the transaction, and Z's and V's separate legal existences cease for all purposes. In the transaction, the Z and V shareholders exchange their Z and V stock, respectively, for stock of Y.

(ii) *Analysis*. With respect to each of Z and V, the transaction satisfies the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to Country Q law and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z and V, respectively, each of which is the combining entity of a transferor unit, become the assets and liabilities of R, the combining entity and sole member

of the transferee unit, with regard to each of the above transfers, and Z and V each ceases its separate legal existence for all purposes. Because Y is in control of R immediately after the transaction, the Z shareholders and the V shareholders will be treated as receiving stock of a corporation that is in control of R, the combining entity of the transferee unit that is the acquiring corporation for purposes of section 368(a)(2)(D). Accordingly, the transaction qualifies as the statutory merger or consolidation of each of Z and V into R, a corporation controlled by Y, and is a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D).

(v) *Effective date.* This paragraph (b)(1) applies to transactions occurring on or after January 23, 2006. For rules regarding statutory mergers or consolidation occurring before January 23, 2006, see §1.368-2T as contained in 26 CFR part 1, revised April 1, 2005, and §1.368-2(b)(1) as in effect before January 24, 2003 (see 26 CFR part 1, revised April 1, 2002).

\* \* \* \* \*

### §1.368-2T [Removed]

Par. 3. Section 1.368-2T is removed.

Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved January 17, 2006.

Eric Solomon,  
*Acting Deputy Assistant  
Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on January 23, 2006, 11:43 a.m., and published in the issue of the Federal Register for January 26, 2006, 71 F.R. 4259)

## Section 671.—Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners

26 CFR 1.671-4: Method of reporting.

### T.D. 9241

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 301, and 602

### Reporting for Widely Held Fixed Investment Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations that define widely held fixed investment trusts, clarify the reporting obligations of the trustees and the middlemen connected with these trusts, and provide for communication of tax information to beneficial owners of trust interests. The regulations will affect trustees of, and middlemen holding interests on behalf of beneficial owners of trust interests with respect to, widely held fixed investment trusts.

**DATES:** *Effective Date:* These regulations are effective January 24, 2006.

*Applicability Date:* For dates of applicability of these regulations, see §1.671-5(m).

FOR FURTHER INFORMATION CONTACT: Faith Colson, (202) 622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The collection of information contained in these final regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1540. Response to this collection of information is mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per recordkeeper varies from 1 to 4 hours, depending on individual circumstances, with an estimated average of 2 hours. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Background

This document contains amendments to 26 CFR parts 1, 301 and 602. On June 20, 2002, the Internal Revenue Service (IRS) and the Treasury Department withdrew proposed regulations (REG-209813-96, 1998-2 C.B. 259) relating to the reporting requirements for widely held fixed investment trusts (WHFITs) previously published in the **Federal Register** (63 FR 43354) on August 13, 1998 (1998 Proposed Regulations) and published a new notice of proposed rulemaking (REG-106871-00, 2002-2 C.B. 190) in the **Federal Register** (67 FR 41892) on June 20, 2002 (Reproposed Regulations). No public hearing was requested or held with respect to the Reproposed Regulations. Comments responding to the Reproposed Regulations were received. After consideration of the comments, the Reproposed Regulations, with certain revisions, are adopted as final regulations by this Treasury decision.

Section 301.7701-4(c) of the Procedure and Administration Regulations provides grantor trust treatment to an investment trust with a single class of ownership interests, representing undivided benefi-



cial interests in the assets of the trust, if there is no power to vary the investment of the owners (a fixed investment trust). An investment trust with multiple classes of ownership interests, in which there is no power to vary the investment of the owners will also be treated as a grantor trust, if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiple classes is incidental to that purpose. Beneficial owners of trust interests are treated as grantors. See §301.7701-4(c); see also Rev. Rul. 84-10, 1984-1 C.B. 155; Rev. Rul. 61-175, 1961-2 C.B. 128.

Trustees of fixed investment trusts frequently do not know the identities of the beneficial owners of the trust interests and are unable to communicate tax information directly to them because trust interests often are held in street name, *i.e.*, in the name of a middleman. The repropoed and final regulations provide rules that specifically require the sharing of tax information among trustees, middlemen, and beneficial owners of fixed investment trusts that meet the definition of a widely held fixed investment trust (WHFIT). (See section I(A) below.)

In general, the final regulations retain the structure of the Reproposed Regulations. Paragraph (c) of the repropoed and final regulations provides general reporting requirements for trustees to provide information to requesting persons, which include: (1) middlemen, (2) beneficial owners who are brokers, (3) exempt recipients who hold their trust interests directly (and not through a middleman), (4) noncalendar-year beneficial owners who hold their trust interests directly, and (5) a representative or agent of any of the above. Paragraphs (d) and (e) of the repropoed and final regulations describe the responsibility of trustees and middlemen for information reporting to the IRS and beneficial owners. Paragraphs (f) and (g) of the repropoed and final regulations provide reporting safe harbors.

## **Explanation of Revisions to Reproposed Regulations and Summary of Comments**

### *I. Definitions*

#### *A. Definition of a widely held fixed investment trust and classification*

*as a widely held mortgage trust or a non-mortgage widely held fixed investment trust*

The Reproposed Regulations define a WHFIT as an arrangement classified as a trust under §301.7701-4(c) in which at least one interest is held by a middleman, provided that the trust is classified as a United States person under section 7701(a)(30)(E). The final regulations retain this definition.

The Reproposed Regulations introduced the term *widely held mortgage trust* (WHMT) to describe a WHFIT, the assets of which are mortgages, amounts received on mortgages, and reasonably required reserve funds, as measured by value. The final regulations expand the definition of a WHMT, to provide that a WHFIT is also a WHMT if substantially all its assets also include trust interests in one or more WHMTs and regular interests in one or more real estate mortgage investment conduits (REMICs).

The final regulations also introduce a new term, *non-mortgage widely held fixed investment trust* (NMWHFIT), to clarify and distinguish the requirements and reporting safe-harbor for WHMTs from the requirements and reporting safe harbor applicable to other WHFITs. A NMWHFIT is any WHFIT that is not a WHMT.

#### *B. Definition of a mortgage*

The Reproposed Regulations provide a reporting safe harbor for WHMTs that directly hold interests in mortgages; the safe harbor is not available to tiered arrangements. The IRS and the Treasury Department, after considering the comments received with respect to the Reproposed Regulations, have determined that the definition of a mortgage should be clarified in the final regulations to provide that an interest in a WHMT is not a mortgage under the regulations. Accordingly, the final regulations define a mortgage as an obligation that is principally secured by an interest in real property within the meaning of §1.860G-2(a)(5) of the Income Tax Regulations, except that a mortgage does not include an interest in another WHMT or an interest in a mortgage held by another WHMT. The principal effect of this change is to clarify that, although a WHFIT investing in another WHMT is

classified as a WHMT and is subject to the general reporting provisions that apply only to WHMTs, it is not eligible for the WHMT safe harbor reporting rules for the reasons discussed in section V(C) below.

#### *C. Definition of trust interest holders, beneficial owners and middleman*

Under the Reproposed Regulations, a unit interest holder is defined as any person who holds a direct or indirect interest in a WHFIT at any time during the calendar year. The final regulations replace the term unit interest holder with two new terms: trust interest holder (TIH) and beneficial owner. A TIH is any person who holds a direct or indirect interest in a WHFIT at any time during the calendar year. A beneficial owner is a TIH who holds a beneficial interest in a WHFIT. As in the Reproposed Regulations, in the final regulations, the term middleman refers to a TIH that holds a trust interest on behalf of, or for the account of, another person, or who otherwise acts in a capacity as an intermediary for the account of another person.

#### *D. Definition of item*

The Reproposed Regulations use the term item without defining that term. Item as used in the final regulations refers broadly to an item of income, expense, or credit as well as any trust event (for example, the sale of an asset) or any characteristic or attribute of the above that affects the income, deductions, or credits reported by a beneficial owner in any taxable year that the beneficial owner holds a trust interest. Item also may refer to an individual item or to a group of items depending on whether the item must be reported individually under §1.671-5(c)(1)(i) and (e)(1).

#### *E. Definition of start-up date*

The Reproposed Regulations define the start-up date of a WHFIT as the date on which substantially all of the assets and the contracts for the purchase of assets are deposited with the trustee of the WHFIT. The Reproposed Regulations also define an asset to include an interest in a contract. Because the definition of an asset includes an interest in a contract, the definition of the start-up date in the Reproposed Regulations is revised in the final regulations to provide that the start-up date is the date on

which substantially all of the assets are deposited with the trustee.

## II. *General Reporting and Record Retention Obligations*

### A. *Requirement that the trustee provide trust information on a calendar year basis*

In general, the repropoed and final regulations require the trustee to provide information regarding the WHFIT to requesting persons. The Repropoed Regulations provide that the trustee could choose either a calendar month, calendar quarter, or half or full calendar year reporting period, provided that the information furnished by the trustee under the chosen reporting period allowed the recipient to determine the WHFIT items attributable to a particular beneficial owner with reasonable accuracy, regardless of the owner's taxable year or the period of time during the calendar year that the owner held the unit interest.

One commentator was concerned that if a trustee choose a reporting period shorter than a full calendar year, the trustee might also report trust information to middlemen more than once a year and because of this, middlemen would be required to process WHFIT information more than once a year. Another commentator was concerned that, if a trustee chose a reporting period shorter than a calendar year, the trustee could be required to report trust information more than once a year.

In response to these comments, the final regulations provide that, regardless of the period chosen by the trustee for calculating trust information, the trustee must provide the information required under these regulations on a calendar year basis. The trustee, of course, may provide additional trust information to requesting persons throughout the calendar year at the trustee's discretion. For example, if a trustee uses a monthly calculation period, the trustee must provide a single statement to requesting persons at the end of the year that contains the information required to be reported under these regulations for each month of the calendar year. In addition to the calendar year statement, the trustee may, but is not required to, provide additional statements to requesting persons during the calendar year.

To further clarify that a trustee may choose the period for calculating the information required to be reported under these regulations, but in all events must report that information to requesting persons on a calendar year basis, the final regulations refer to the period chosen by the trustee for calculating trust information as the calculation period rather than the reporting period.

### B. *Trustee's burden to retain information and supplemental data*

The Repropoed Regulations provide that, throughout the duration of the trust and for a period of five years following the termination of the trust, a trustee must retain: (1) a copy of the information required to be provided to requesting persons each year; and (2) any supplemental data necessary to establish that the information provided to requesting persons is correct and meets the requirements of paragraph (c) (supplemental data).

One commentator noted that some WHFITs, particularly WHMTs, may be in existence for up to 30 years and that the requirement in the Repropoed Regulations for a trustee to maintain the WHFIT's records for up to 35 years is overly burdensome. The commentator acknowledged that the IRS and investors may need to obtain WHFIT information from the trustee before the limitations period applicable to a beneficial owner's taxable year expires and suggested that the final regulations provide that a trustee only be required to retain information for a certain period after the close of the calendar year to which the information relates.

The IRS and the Treasury Department adopt this suggestion with respect to supplemental data. However, information with respect to each calendar year of the WHFIT may be required by the IRS and by beneficial owners in order to determine tax items of a beneficial owner (for example, market discount or basis) for the entire life of the WHFIT and for several years after its termination. For this reason, the final regulations continue to require the trustee to retain a copy of the information required to be provided to requesting persons for the duration of the WHFIT and for at least five years after its termination. The IRS and the Treasury Department believe that this requirement is not overly

burdensome because this information can be maintained electronically. The final regulations modify the requirement with respect to supplemental data by providing that trustees need only retain supplemental data for five years after the close of the calendar year to which the supplemental data relates.

### C. *Manner in which WHFIT information is to be provided*

The Repropoed Regulations provide that WHFIT information may be provided in any manner that enables a requesting person to determine, with reasonable accuracy, the WHFIT items that are attributable to a beneficial owner for the taxable year of that beneficial owner. The Repropoed Regulations further require that this information be furnished in a format that generally conforms to industry practice for the reporting of a particular item of income, deduction, or credit for the type of asset or assets held by the WHFIT.

One commentator suggested that, if the trustee is not providing trust information under a safe harbor, information could be shared more accurately and processed more efficiently if trustees were required to calculate and provide trust information on the basis of trust interests. The IRS and the Treasury Department do not agree that calculating and providing trust information on a per trust interest basis is always the best method for conveying information with respect to trust items that are not reported under the safe harbors. The requirement that the trustee provide information consistent with industry practice is intended to ensure that trustees provide WHFIT information in a format that can be processed by the systems used by the majority of middlemen. Accordingly, the final regulations do not adopt the suggestion.

One commentator also suggested that middlemen be permitted to furnish beneficial owners with information calculated on a trust interest basis rather than the amount of the item that is attributable to the beneficial owner. The final regulations permit a middleman or a trustee to furnish information calculated on a trust interest basis to a beneficial owner with respect to a trust item, if: (1) the amount of the item is not required to be provided to the IRS on an information return; and (2) the trustee calcu-

lates and provides information on the basis of a trust interest with respect to that trust item under paragraph (c) of the regulations.

#### D. Elimination of separate general reporting rules for WHMTs

The Reproposed Regulations include separate reporting requirements for trustees and middlemen of WHMTs and trustees and middlemen of WHFITs other than WHMTs (*i.e.*, non-mortgage widely-held fixed investment trusts or NMWHFITs as defined in these final regulations), with respect to market discount, bond premium, and principal payments. The final regulations include general reporting requirements with respect to market discount, bond premium, and non *pro-rata* partial principal payment information that apply to all WHFITs. As under the Reproposed Regulations, the final regulations require WHMTs to provide market discount, bond premium, and non *pro-rata* partial principal payment information regardless of whether the WHMT meets one of the *de minimis* tests described in section III of the Preamble. Under the final regulations, however, NMWHFITs that meet the general *de minimis* test or the qualified NMWHFIT exception (also described in section III of the Preamble) are not required to provide information regarding bond premium and market discount.

#### E. Requirement that a trustee identify a representative of the WHFIT and identify the WHFIT as a WHMT or as a NMWHFIT

The Reproposed Regulations require a trustee of a WHFIT to provide the name, address and telephone number of the WHFIT representative in a publication widely available to middlemen, in the trust's prospectus, or at the trustee's Internet website. The final regulations retain this requirement. Further, if the trustee provides trust information at an Internet website, the final regulations also require trustees, in addition to providing information regarding the WHFIT representative, to provide the address of the Internet website at which the trustee provides WHFIT information.

Two commentators were concerned that middlemen would not be able to identify

a client's investment as an investment in a WHFIT and suggested that the IRS publish a directory or list of WHFITs that would include the name and CUSIP number of each WHFIT, along with the name, address and telephone number of the WHFIT's representative. Commentators noted that a publicly available directory or list would assist middlemen and brokers in identifying investment trusts as WHFITs and in locating the WHFIT's representatives.

In response to these comments, the final regulations require a trustee to identify the WHFIT as either a WHMT or a NMWHFIT when identifying the trust representative. Further, the IRS and the Treasury Department are studying whether a directory or list of WHFITs can be compiled by the IRS. The IRS and Treasury Department are concerned that such a directory is not currently feasible because of the large number of WHMTs. However, the IRS and Treasury request additional comments from middlemen regarding the type of WHFITs that should be included in any directory, the type of information needed by middlemen (especially, middlemen holding WHMT interests), and the format of a directory that would be most helpful. The IRS and Treasury Department also request comments from trustees regarding how the IRS could obtain the trust information needed for the directory from the trustees in the least burdensome manner for taxpayers as well the Government.

### III. Reporting of Asset Sales and Dispositions

#### A. General information reporting requirements

Under the Reproposed Regulations, the trustee is required to provide information that would enable a requesting person to calculate the amount of trust sales proceeds attributable to a beneficial owner with respect to each sale or disposition of an asset by the trust. In addition, consistent with grantor trust treatment, unless a WHFIT meets the "*de minimis* test," (discussed in III(B) of this Preamble), the trustee is required under the Reproposed Regulations to provide information that would enable a beneficial owner to allocate with reasonable accuracy a portion of its basis in its trust interest and to allocate a portion of its market discount

or bond premium, if any, to each sale or disposition of an asset by the trust. The final regulations retain these general information reporting requirements for asset sales and dispositions. Although the requirements to provide market discount and bond premium information (discussed in section II(D) of this Preamble), are the same as those in the Reproposed Regulations, in the final regulations, for purposes of clarity, these requirements are provided separately from the requirement to provide information with respect to sales and dispositions of assets by the trust.

The final regulations retain the exception from the general information reporting requirements for WHFITs that meet the general *de minimis* test. In addition, the final regulations provide an exception for WHMTs that meet a special *de minimis* test for WHMTs that directly hold interests in mortgages (the WHMT *de minimis* test is discussed in section III(E) of this Preamble). The final regulations also provide an exception from the general information reporting requirements for NMWHFITs that meet the qualified NMWHFIT exception, which is applicable only to NMWHFITs with a start up date that is on or before February 23, 2006.

#### B. Simplified reporting for WHFITs that meet the general WHFIT *de minimis* test

For WHFITs that meet a *de minimis* test, the Reproposed Regulations substantially simplified reporting with respect to the sale or disposition of a trust asset from that required under the 1998 Proposed Regulations. These simplified rules balanced current industry practice with the need for beneficial owners to accurately report the tax consequences of ownership of a trust interest. Under the Reproposed Regulations, the WHFIT *de minimis* test is satisfied for the calendar year if the aggregate amount of trust sales proceeds for that calendar year is not more than five percent of the fair market value of the assets of the trust as of January 1 of that year (the general WHFIT *de minimis* test). The Reproposed Regulations define trust sales proceeds as the gross proceeds received by the WHFIT with respect to a sale or disposition of an asset by the WHFIT.

Under the Reproposed Regulations, if the trust meets the general WHFIT *de minimis* test, the trustee is excepted from the

requirement to report information regarding basis, market discount and bond premium. The IRS and Treasury Department recognize that this method of reporting will likely result in some deferral of both gain and loss for investors, but have determined that, in cases where the WHFIT has *de minimis* sales and dispositions, the level of deferral is acceptable given the costs of fully accurate reporting of sales and dispositions. The final regulations retain this exception from the general requirement to provide basis, market discount and bond premium information for WHFITs that meet the general *de minimis* test.

#### *C. Extension of simplified reporting to NMWHFITs that meet the qualified NMWHFIT exception*

Several commentators requested that the final regulations except WHFITs having a start-up date prior to the date of publication of these final regulations from the requirement to report basis, market discount, and bond premium information with respect to sales and dispositions. These commentators also requested that trustees and middlemen be permitted to report information regarding distributed trust sales proceeds rather than attributable trust sales proceeds.

To accommodate the industry's concerns regarding existing NMWHFITs, the final regulations add an exception for qualified NMWHFITs (the qualified NMWHFIT exception). The qualified NMWHFIT exception is met if a NMWHFIT has a start-up date that is on or before February 23, 2006 and the calendar year for which the trustee is reporting begins before January 1, 2011. NMWHFITs that meet the qualified NMWHFIT exception are excepted from the requirement that trustees and middlemen provide information regarding basis, market discount, and bond premium.

#### *D. Distributed trust sales proceeds may be reported by trustees and middlemen of trusts meeting the general de minimis test or the qualified NMWHFIT exception*

Several commentators noted that the requirement in the Reproposed Regulations that trustees of WHFITs other than WHMTs (NMWHFITs in these final regulations) report information to enable a

requesting person to determine the amount of trust sales proceeds attributable to a beneficial owner would impose an undue burden. These commentators noted that, under current industry practice, trustees and middlemen of WHFITs other than WHMTs only report to the IRS and the beneficial owner the amount of trust sales proceeds distributed to the beneficial owner.

The IRS and Treasury Department have determined that if a NMWHFIT meets either the general WHFIT *de minimis* test for the calendar year or the qualified NMWHFIT exception, the purpose of reporting trust sales proceeds information to beneficial owners (*e.g.*, to enable beneficial owners to adjust their basis in their trust interest to account for the sale or disposition of the trust asset) is met if the beneficial owner is given information regarding the amount of trust sales proceeds distributed to the beneficial owner. Accordingly, if a NMWHFIT meets either the general WHFIT *de minimis* test for the calendar year, or the qualified NMWHFIT exception, the final regulations require: (1) trustees to report information that will enable middlemen to determine the amount of trust sales proceeds distributed to each beneficial owner during the calendar year; and (2) middlemen and trustees to report to the IRS and to each beneficial owner the amount of trust sales proceeds that are distributed to that beneficial owner.

#### *E. Simplified reporting for WHMTs that meet the general de minimis test or the special WHMT de minimis test*

In addition to the general WHFIT *de minimis* test, the final regulations also provide a special WHMT *de minimis* test that applies to WHMTs that directly hold interests in mortgages (the special WHMT *de minimis* test). The special WHMT *de minimis* test is met if the trust sales proceeds received by the WHMT for the calendar year are not more than five percent of the aggregate outstanding principal balance of the WHMT (as defined in paragraph (g)(1)(iii)(D) of the final regulations) as of January 1 of that year. In applying the special WHMT *de minimis* test, amounts that result from the complete or partial payment of the outstanding principal balance of the mortgages held by the

WHMT are not included in the amount of trust sales proceeds. A WHMT that holds interests in another WHMT or that holds interests in a REMIC may not use the special WHMT *de minimis* test, but may use the general WHFIT *de minimis* test (discussed in section III(B), above).

If a WHMT meets the special WHMT *de minimis* test or the general WHFIT *de minimis* test, trustees and middlemen are excepted from the general requirement to report information to enable a beneficial owner to allocate basis to a sale or disposition and are only required to report information regarding the trust sales proceeds that are attributable to a particular beneficial owner. If a WHMT does not meet a *de minimis* test, trustees and middlemen must report information to enable a beneficial owner to allocate basis to the sale or disposition as well as the trust sales proceeds that are attributable to the beneficial owner.

#### *IV. Exception for Certain Equity Trusts From the Requirement that Trustees and Middlemen Report Information to Enable a Requesting Person to Determine the Income That is Attributable to a Redeeming or Selling Beneficial Owner up to the Date of Redemption or Sale*

The Reproposed Regulations require trustees and middlemen to report information to enable requesting persons to determine the income of the WHFIT attributable to a selling, purchasing, or redeeming beneficial owner for the portion of the calendar year that the beneficial owner held its trust interest. Commentators objected to this requirement for WHFITs if substantially all the income of the WHFIT is comprised of dividends (equity trusts). These commentators noted that although trustees and middlemen report interest income earned by the WHFIT up to the date of redemption or sale of a trust interest, providing this information with respect to dividend income is inconsistent with long-standing WHFIT industry reporting practice. Currently there is no mechanism in place for communicating this information between trustees and middlemen of equity trusts. Under current industry practice, the entire amount paid to a beneficial owner who sells or redeems an interest in an equity trust, including the amount paid for undistributed dividends held by the

trust at the time of the sale or redemption, is reported to the IRS and to the beneficial owner as gross proceeds. As a result, a selling or redeeming beneficial owner may report the ordinary dividend income portion of the payment as a capital gain. The purchasing beneficial owner also receives incorrect income information that may lead the purchasing beneficial owner to overstate its dividend income. Commentators objected to expending resources for the development and testing of new tax reporting systems to accurately report dividend income to selling, purchasing, and redeeming beneficial owners, especially with respect to existing equity trusts.

Commentators acknowledge, however, that the net asset value of an equity trust, including the cash held for distribution, generally is calculated on a daily basis. Because in the final regulations, the cash held for distribution is a key component in calculating the amount of income attributable to a selling, purchasing, or redeeming beneficial owner under the safe harbor for NMWHFITs, the final regulations retain the general requirement that trustees and middlemen provide information to determine the trust income that should be attributed to a redeeming, selling, or purchasing beneficial owner.

The IRS and the Treasury Department recognize, however, that if an equity trust frequently distributes its income, the trust is not likely to accumulate significant undistributed dividend income. In such a case, the increased accuracy that results from providing beneficial owners with accurate income information up to the date of sale or redemption does not warrant the burden of compiling and reporting this information. Accordingly, under the final regulations, trustees or middlemen of equity trusts that are required by their governing documents to distribute all cash (less reasonably required reserve funds) held by the NMWHFIT at least monthly need not provide information regarding the income that is attributable to a redeeming, selling, or purchasing beneficial owner up to the date of sale or redemption. The final regulations also except trustees and middlemen of an equity trust that meets the qualified NMWHFIT exception (described in section III of this Preamble) from the requirement that trustees and

middlemen provide information regarding the income that is attributable to a redeeming, selling, or purchasing beneficial owner up to the date of sale or redemption.

## V. Safe Harbor Reporting for WHFITs

### A. *The Safe Harbors must be used consistently*

Under the Reproposed Regulations, a trustee of a WHFIT can decide whether or not to use the safe harbor reporting practices on a year-by-year basis. The IRS and the Treasury Department have concluded, however, that middlemen and beneficial owners should receive WHFIT information that is calculated consistently from one calendar year to the next because, assuming beneficial owners report trust items consistent with the WHFIT information provided to them, a trustee's change in reporting could result in changes in the timing that may impact beneficial owners. Further, allowing trustees to report under the safe harbor one year and not the next, likely would confuse and burden the middlemen and beneficial owners that must process WHFIT information. Accordingly, the final regulations require trustees that choose to use the safe harbor to report under the safe harbor for the life of the WHFIT. WHFITs that have a start-up date prior to January 1, 2007 may choose to report under the safe harbor provided the trustee begins to report according to the safe harbor requirements on or before January 1, 2007 and does so for the life of the WHFIT.

Under the Reproposed Regulations and the final regulations, a WHMT must meet the eligibility requirements of §1.671-5(g)(1)(ii) and report consistently with the safe harbor reporting rules to be deemed to have met its reporting requirements under paragraph (c) of the regulations with respect to the trust items described in the safe harbor. The final regulations eliminate two of the eligibility requirements in the Reproposed Regulations that are inconsistent with the rule that the safe harbor must be used for the life of the WHMT.

### B. *Request for comments regarding the need for safe harbors for NMWHFITs that*

*are outside the safe harbor in the final regulations*

The Reproposed Regulations include safe harbor reporting rules available to WHFITs other than WHMTs (*i.e.*, NMWHFITs). If the trustee of a WHFIT other than a WHMT reports consistently with the safe harbor, the trustee is deemed to have met the requirements of paragraph (c)(1) of the Reproposed Regulations. Those safe harbor reporting rules were developed in response to comments received on the 1998 Proposed Regulations describing the current reporting practices of WHFITs that primarily receive dividend and interest income.

Upon reconsideration of those safe harbor reporting rules and the various types of NMWHFITs, the IRS and the Treasury Department recognize that the type of information reported under those reporting rules is only relevant to NMWHFITs that hold stock and debt instruments and that information reported under the safe harbor probably would not be useful to middlemen and beneficial owners of NMWHFITs that hold other types of assets. As a result, the IRS and Treasury concluded that safe harbor treatment should only be available to NMWHFITs for which the safe harbors were designed (*e.g.*, NMWHFITs that hold stock and debt instruments) and that other safe harbor reporting rules should govern NMWHFITs that are outside the safe harbor. Accordingly, in the final regulations only NMWHFITs substantially all the income of which is comprised of dividends (as defined in section 6042(b) and the regulations thereunder) or interest (as defined in section 6049(b) and the regulations thereunder) that report as provided in the NMWHFIT safe harbor will be deemed to have met the requirements of paragraph (c)(1) of the final regulations. The IRS and the Treasury Department are considering providing additional safe harbor reporting rules for NMWHFITs that are not under the NMWHFIT safe harbor in the final regulations and encourage trustees and middlemen to submit comments regarding NMWHFITs for which further reporting safe harbors should be provided, including information regarding current industry reporting practice for NMWHFITs that do not qualify for the NMWHFIT safe harbor in the final regulations.

### C. Safe harbor reporting for WHMTs

#### 1. Reporting Sales and Dispositions Under the WHMT Safe Harbor

The 1998 Proposed Regulations did not allow trustees and middlemen to aggregate sales and dispositions of trust assets, even fungible trust assets, for reporting purposes. In response to comments on the 1998 Proposed Regulations, as well as the addition of section 1272(a)(6)(C)(iii) to the Code in 1997, the Reproposed Regulations permit aggregate reporting for sales and dispositions and principal receipts for WHMTs eligible to report under the WHMT safe harbor. Under the WHMT safe harbor, a trustee is permitted to combine, for reporting purposes, amounts received as trust sales proceeds from the sale or disposition of some mortgages (including principal receipts that completely retire a mortgage) with non *pro-rata* partial principal payments from other mortgages. Thus, the safe harbor permits trustees and middlemen to report trust information as if the WHMT, in effect, held only one mortgage, and to report the aggregate of trust sales proceeds and non *pro-rata* partial principal payments as though the trustee had received a non *pro-rata* partial principal payment on that mortgage.

The WHMT safe harbor in the Reproposed Regulations is only available to WHMTs that met the requirements of §1.671-5(g)(1)(ii) of those regulations. Commentators requested that the final regulations provide that trustees of all WHMTs, not just those meeting the eligibility requirements of §1.671-5(g)(1)(ii), be allowed to apply this treatment for reporting purposes. The commentators suggested that reporting sales and dispositions separately from principal payments is unnecessary because receipt by the trust of trust sales proceeds and receipt of principal payments have identical tax consequences for a beneficial owner.

Under Rev. Rul. 84-10, 1984-1 C.B. 155, a beneficial owner of a WHMT is treated for federal income tax purposes as having a proportionate share of equitable ownership in each of the mortgages of the WHMT. If a taxpayer owns mortgages outright and not in trust, the taxpayer does not report mortgage sales proceeds or the complete prepayment of a mortgage in

the same manner as the receipt of a non *pro-rata* partial principal payment. That is, a taxpayer that owns two mortgages does not combine the sale of one mortgage with the receipt of non *pro-rata* partial principal payments from the other mortgage for purposes of calculating the taxpayer's federal income tax liability. For this reason and the reasons discussed in section V(C)(2) of this Preamble, the IRS and Treasury Department do not adopt the commentators' request.

#### 2. Requirement that Trustees use a Prepayment Assumption When Providing Market Discount and OID Information Under the WHMT Safe Harbor

The Reproposed Regulations require trustees and middlemen of all WHMTs to report information to enable beneficial owners to calculate market discount in any reasonable manner that is consistent with section 1276(a)(3). Regulations have not been issued under the market discount provisions of the Code (sections 1276 to 1278). The preamble to the Reproposed Regulations notes that, in the absence of regulations governing accrual of market discount, guidance regarding the accrual of market discount with respect to the partial payment of a debt instrument is provided in the conference report (see H.R. Rep. No. 841, 99<sup>th</sup> Cong., 2<sup>nd</sup> Sess., at II-842 (1986)) accompanying the amendment that enacted section 1276(a)(3) (see section 1803(a)(13)(A) of the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085) (the Conference Report). Consistent with Congressional intent expressed in the Conference Report indicating that holders must report market discount in the absence of regulations, the Reproposed Regulations impose a general requirement that trustees and middlemen of WHMTs report market discount information.

The WHMT safe harbor provision for reporting market discount information in the Reproposed Regulations is based on the Conference Report. Under that safe harbor, trustees report market discount by providing one market discount fraction for the WHMT that is the ratio of, either: (1) the OID accrued during the month to the total remaining OID as of the beginning of the month; or (2) the interest paid during the month to the remaining interest payable on the mortgages held

by the WHMT as of the beginning of the month. The Reproposed Regulations require trustees to utilize a method that takes into account the prepayment assumption used in pricing the original issue of trust interests. The Reproposed Regulations also include a WHMT safe harbor provision for OID information that required the use of the same prepayment assumption.

Commentators reported that they assumed that the Reproposed Regulations permit trustees to use the safe harbor for reporting only sales and dispositions and the receipt of principal payments and to ignore other trust items, such as market discount and OID, when reporting under the safe harbor.

The WHMT safe harbor in the final regulations permits trustees and middlemen of WHMTs that meet the requirements of §1.671-5(g)(1)(ii), to aggregate the trust sales proceeds received from sales and dispositions of some mortgages with non *pro-rata* partial principal payments on other mortgages, but the safe harbor also requires trustees and middlemen to report market discount and OID information consistent with section 1272(a)(6). Safe harbor treatment is available to WHMTs that meet the requirements of §1.671-5(g)(1)(ii) because the IRS and the Treasury Department have determined that, for those WHMTs, if market discount and OID are reported as provided in the safe harbor, mortgage-by-mortgage reporting with respect to sales and dispositions and principal payments is unnecessary. Accordingly, the final regulations clarify that, for a trustee to be deemed to have met the requirements of paragraph (c)(1) of the regulations, the trustee must report all items identified in the WHMT safe harbor consistent with the WHMT safe harbor.

#### 3. Reporting for WHMTs that are outside the safe harbor

Some commentators may view the Conference Report as providing authority to report market discount information using a single composite fraction, regardless of whether the trustee is permitted to, and does in fact, report under the WHMT safe harbor. The IRS and the Treasury Department disagree with the commentators' reading of the Conference Report as applied to WHMTs. The Conference Report

simply provides that, until such time as the Treasury Department issues regulations regarding the computation of the accrual of market discount, holders may elect to accrue market discount using either a constant interest method or a market discount fraction.

The Conference Report may implicitly discuss aggregate reporting in that it states that, in the case of debt instruments that would be subject to the OID rules contained in section 1272(a)(6) (without regard to whether the debt instruments have OID), the same prepayment assumption that would be made in computing OID would be made in computing the accrual of market discount (whether or not the taxpayer elects to accrue market discount on the basis of a constant interest rate). Section 1272(a)(6)(C)(iii) provides that section 1272(a)(6) applies to any pool of debt instruments, the yield on which may be affected by reason of prepayments. However, no guidance has been issued regarding the application of section 1272(a)(6)(C)(iii). Until guidance is issued under section 1272(a)(6)(C)(iii), the IRS and Treasury Department believe that it is appropriate to provide safe harbor treatment only for trustees of relatively straight forward arrangements who report information consistent with the application of section 1272(a)(6) as provided by the safe harbor reporting rules.

#### 4. Reporting Bond Premium Under the WHMT Safe Harbor

The Reproposed Regulations include a general requirement that trustees and middlemen of all WHMTs report information to enable beneficial owners to determine the amount of amortizable bond premium, if any, in any manner that is reasonably consistent with section 171. The Reproposed Regulations reserve the portion of the WHMT safe harbor on reporting information regarding bond premium. None of the comments on the Reproposed Regulations specifically addressed bond premium issues. Accordingly, the final regulations continue to reserve guidance on the issue while the IRS and the Treasury Department study how bond premium information is to be appropriately reported for WHMTs. The IRS and the Treasury Department welcome comments on this issue. Until safe harbor reporting rules are pro-

vided for bond premium, a trustee will not be penalized if the trustee reports information that enables a beneficial owner to determine, in any manner reasonably consistent with section 171, the amount of the beneficial owner's amortizable bond premium, if any, for the calendar year.

#### VI. Application of Reporting Rules to Foreign Fixed Investment Trusts

A fixed investment trust that is not classified as a United States person is not a WHFIT under the Reproposed Regulations or the final regulations. Nothing in the Reproposed Regulations or these final regulations alters the application of section 6048 to United States investors in a foreign fixed investment trust. The preamble to the Reproposed Regulations notes that the IRS and the Treasury Department continue to study how to facilitate the application of section 6048 rules to foreign fixed investment trusts and requested comments on this issue, including how forms 3520 and 3520A could be adapted for use with foreign fixed investment trusts.

Commentators suggested that many beneficial owners of interests in a foreign fixed investment trust cannot comply with the reporting requirements of section 6048 because they cannot obtain the necessary information from the trustee. These commentators suggested that, rather than adapting Forms 3520 and 3520A to foreign fixed investment trusts, the IRS and the Treasury Department should permit certain foreign fixed investment trusts to report pursuant to the reporting rules in these regulations. The commentators also suggested that the final regulations provide that, if a foreign fixed investment trust reports pursuant to these reporting rules, United States investors in the trust be excepted from the reporting rules in section 6048. The IRS and the Treasury Department intend to provide guidance in the area of foreign trust reporting and will consider whether any of the suggested approaches for WHFITs are more appropriate in this context.

#### VII. Effective Date of Final Regulations and Applicability to Existing WHFITs

The Reproposed Regulations provide that the reporting rules were to be applicable beginning January 1, 2004. Most

commentators requested that the applicability date be delayed until January 1, 2005, to enable trustees and middlemen to change their reporting systems to comply with the new reporting rules. To ensure that there is sufficient time to comply with the reporting requirements, the final regulations provide that these regulations are effective January 1, 2007. Accordingly, beginning with the 2007 calendar year, trustees must report trust information in accordance with paragraph (c) of the final regulations. Trustees and middlemen must file Forms 1099 with the IRS and furnish tax information statements to beneficial owners that meet the requirements of paragraphs (d) and (e) of the final regulations with respect to the 2007 calendar year and all subsequent years.

Regarding the applicability of these reporting rules to existing WHFITs, one commentator requested that the final regulations except all WHFITs in existence as of the effective date of the final regulations from the new reporting rules. Other commentators requested that WHFITs in existence as of the effective date of the final regulations be excepted from specific provisions. The final regulations apply to all WHFITs, including those in existence as of the effective date. However, in response to the comments, the final regulations except certain NMWHFITs that have a start-up date on or before February 23, 2006 from specific reporting requirements regarding market discount, bond premium, sales and dispositions, redemptions, and sales of trust interests until January 1, 2011. The details of these exceptions have been discussed in sections II(D), III, and IV of this preamble.

#### Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations generally clarify existing reporting obligations and are expected, for the most part, to have minimal impact on industry practice, and to not have a significant economic impact on entities subject to the regulations.

Further, the reporting burdens in these regulations will fall primarily on large brokerage firms, large banks, and other large entities acting as trustees or middlemen, most of which are not small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Thus, a substantial number of small entities are not expected to be affected. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed and the Proposed Regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal author of these regulations is Faith Colson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

### Adoption of the Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.671-4 is amended by revising paragraph (a) to read as follows:

#### §1.671-4 Method of reporting.

(a) *Portion of trust treated as owned by the grantor or another person.* Except as otherwise provided in paragraph (b) of this section and §1.671-5, items of income, deduction, and credit attributable to any portion of a trust that, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code, is treated as owned by the grantor or another person, are not reported by the trust on Form 1041,

“U.S. Income Tax Return for Estates and Trusts,” but are shown on a separate statement to be attached to that form. Section 1.671-5 provides special reporting rules for widely held fixed investment trusts. Section 301.7701-4(e)(2) of this chapter provides guidance on how these reporting rules apply to an environmental remediation trust.

\* \* \* \* \*

Par. 3. Section 1.671-5 is added to read as follows:

#### §1.671-5 Reporting for widely held fixed investment trusts.

(a) *Table of contents.* This table of contents lists the major paragraph headings for this section.

- (a) Table of contents.
- (b) Definitions.
- (c) Trustee’s obligation to report information.

- (1) In general.
- (i) Calculation.
- (ii) Calculation period.
- (iii) Accounting method.
- (iv) Gross income requirement.
- (2) Information to be reported by all WHFITs.

(i) Trust identification and calculation period chosen.

(ii) Items of income, expense, and credit.

(iii) Non *pro-rata* partial principal payments.

(iv) Asset sales and dispositions.

(v) Redemptions and sales of WHFIT interests.

(vi) Information regarding bond premium.

(vii) Information regarding market discount.

(viii) Other information.

(3) Identifying the representative who will provide trust information.

(4) Time and manner of providing information.

(i) Time.

(ii) Manner.

(iii) Inclusion of information with respect to all calculation periods.

(5) Requesting information from a WHFIT.

(i) In general.

(ii) Manner of requesting information.

(iii) Period of time during which a requesting person may request WHFIT information.

(6) Trustee’s requirement to retain records.

(d) Form 1099 requirement for trustees and middlemen.

(1) Obligation to file Form 1099 with the IRS.

(i) In general.

(ii) Forms 1099 not required for exempt recipients.

(iii) Reporting and withholding with respect to foreign persons.

(2) Information to be reported.

(i) Determining amounts to be provided on Forms 1099.

(ii) Information to be provided on Forms 1099.

(3) Time and manner of filing Forms 1099.

(i) Time and place.

(ii) Reporting trust sales proceeds, redemption asset proceeds, redemption proceeds, sales asset proceeds, sales proceeds, and non *pro-rata* partial principal payments.

(e) Requirement to furnish a written tax information statement to the TIH.

(1) In general.

(2) Information required.

(i) WHFIT information.

(ii) Identification of the person furnishing the statement.

(iii) Items of income, expense, and credit.

(iv) Non *pro-rata* partial principal payments.

(v) Asset sales and dispositions.

(vi) Redemption or sale of a trust interest.

(vii) Information regarding market discount and bond premium.

(viii) Other information.

(ix) Required statement.

(3) Due date and other requirements.

(4) Requirement to retain records.

(f) Safe harbor for providing information for certain NMWHFITs.

(1) Safe harbor for trustee reporting of NMWHFIT information.

(i) In general.

(ii) Reporting NMWHFIT income and expenses.

(iii) Reporting non *pro-rata* partial principal payments under the safe harbor.



(iv) Reporting sales and dispositions of NMWHFIT assets under the safe harbor.

(v) Reporting redemptions under the safe harbor.

(vi) Reporting the sale of a trust interest under the safe harbor.

(vii) Reporting OID information under the safe harbor.

(viii) Reporting market discount information under the safe harbor.

(ix) Reporting bond premium information under the safe harbor.

(x) Reporting additional information.

(2) Use of information provided by trustees under the safe harbor for NMWHFITs.

(i) In general.

(ii) Determining NMWHFIT income and expenses under the safe harbor.

(iii) Reporting non *pro-rata* partial principal payments under the safe harbor.

(iv) Reporting sales and dispositions of NMWHFIT assets under the safe harbor.

(v) Reporting redemptions under the safe harbor.

(vi) Reporting sales of trust interests under the safe harbor.

(vii) Reporting OID information under the safe harbor.

(viii) Reporting market discount information under the safe harbor.

(ix) Reporting bond premium information under the safe harbor.

(3) Example of the use of the safe harbor for NMWHFITs.

(i) Facts.

(ii) Trustee reporting.

(iii) Brokers' use of information provided by Trustee.

(g) Safe Harbor for certain WHMTs.

(1) Safe harbor for trustees of certain WHMTs for reporting information.

(i) In general.

(ii) Requirements.

(iii) Reporting WHMT income, expenses, non *pro-rata* partial principal payments, and sales and dispositions under the safe harbor.

(iv) Reporting OID information under the safe harbor.

(v) Reporting market discount information under the safe harbor.

(vi) Reporting bond premium information under the safe harbor.

(2) Use of information provided by a trustee under the safe harbor.

(i) In general.

(ii) Reporting WHMT income, expenses, non *pro-rata* partial principal payments, and sales and dispositions under the safe harbor.

(iii) Reporting OID information under the safe harbor.

(iv) Requirement to provide market discount information under the safe harbor.

(v) Requirement to provide bond premium information under the safe harbor.

(3) Example of the use of the safe harbor for WHMTs.

(i) Facts.

(ii) Trustee reporting.

(iii) Broker's use of the information provided by Trustee.

(h) Requirement that middlemen furnish information to beneficial owners that are exempt recipients and non calendar year beneficial owners.

(1) In general.

(2) Time for providing information.

(3) Manner of providing information.

(4) Clearing organization.

(i) Reserved.

(j) Coordination with other information reporting rules.

(k) Backup withholding requirements.

(l) Penalties for failure to comply.

(m) Effective date.

(b) *Definitions.* Solely for purposes of this section:

(1) An *asset* includes any real or personal, tangible or intangible property held by the trust, including an interest in a contract.

(2) An *affected expense* is an expense described in §1.67-2T(i)(1).

(3) A *beneficial owner* is a trust interest holder (TIH) (as defined in paragraph (b)(20) of this section) that holds a beneficial interest in a widely held fixed investment trust (WHFIT) (as defined in paragraph (b)(22) of this section.)

(4) The *calculation period* is the period the trustee chooses under paragraph (c)(1)(ii) of this section for calculating the trust information required to be provided under paragraph (c) of this section.

(5) The *cash held for distribution* is the amount of cash (other than trust sales proceeds) that would be payable to TIHs if the amount of a distribution were required to be determined as of the date in question.

(6) A *clean-up call* is the redemption of all trust interests in termination of the WHFIT when the administrative costs of

the WHFIT outweigh the benefits of maintaining the WHFIT.

(7) An *exempt recipient* is—

(i) Any person described in §1.6049-4(c)(1)(ii);

(ii) A middleman (as defined in paragraph (b)(10) of this section);

(iii) A real estate mortgage investment conduit (as defined in section 860(D)(a)) (REMIC);

(iv) A WHFIT; or

(v) A trust or an estate for which the trustee or middleman of the WHFIT is also required to file a Form 1041, "U.S. Income Tax Return for Estates and Trusts," in its capacity as a fiduciary of that trust or estate.

(8) An *in-kind redemption* is a redemption in which a beneficial owner receives a *pro-rata* share of each of the assets of the WHFIT that the beneficial owner is deemed to own under section 671.

(9) An *item* refers to an item of income, expense, or credit as well as any trust event (for example, the sale of an asset) or any characteristic or attribute of the trust that affects the income, deductions, and credits reported by a beneficial owner in any taxable year that the beneficial owner holds an interest in the trust. An item may refer to an individual item or a group of items depending on whether the item must be reported separately under paragraphs (c)(1)(i) and (e)(1) of this section.

(10) A *middleman* is any TIH, other than a qualified intermediary as defined in §1.1031(k)-1(g), who, at any time during the calendar year, holds an interest in a WHFIT on behalf of, or for the account of, another TIH, or who otherwise acts in a capacity as an intermediary for the account of another person. A middleman includes, but is not limited to—

(i) A custodian of a person's account, such as a bank, financial institution, or brokerage firm acting as custodian of an account;

(ii) A nominee;

(iii) A joint owner of an account or instrument other than—

(A) A joint owner who is the spouse of the other owner; and

(B) A joint owner who is the beneficial owner and whose name appears on the Form 1099 filed with respect to the trust interest under paragraph (d) of this section; and

(iv) A broker (as defined in section 6045(c)(1) and §1.6045-1(a)(1)), holding an interest for a customer in street name.

(11) A *mortgage* is an obligation that is principally secured by an interest in real property within the meaning of §1.860G-2(a)(5), except that a mortgage does not include an interest in another WHFIT or mortgages held by another WHFIT.

(12) A *non-mortgage widely held fixed investment trust* (NMWHFIT) is a WHFIT other than a widely held mortgage trust (as defined in paragraph (b)(23) of this section).

(13) A *non pro-rata partial principal payment* is any partial payment of principal received on a debt instrument which does not retire the debt instrument and which is not a *pro-rata* prepayment described in §1.1275-2(f)(2).

(14) The *redemption asset proceeds* equal the redemption proceeds (as defined in paragraph (b)(15) of this section) less the cash held for distribution with respect to the redeemed trust interest.

(15) The *redemption proceeds* equal the total amount paid to a redeeming TIH as the result of a redemption of a trust interest.

(16) A *requesting person* is—

- (i) A middleman;
- (ii) A beneficial owner who is a broker;
- (iii) A beneficial owner who is an exempt recipient who holds a trust interest directly and not through a middleman;
- (iv) A noncalendar-year beneficial owner who holds a trust interest directly and not through a middleman; or

(v) A representative or agent of a person specified in this paragraph (b)(16).

(17) The *sales asset proceeds* equal the sales proceeds (as defined in paragraph (b)(18) of this section) less the cash held for distribution with respect to the sold trust interest at the time of the sale.

(18) The *sales proceeds* equal the total amount paid to a selling TIH in consideration for the sale of a trust interest.

(19) The *start-up date* is the date on which substantially all of the assets have been deposited with the trustee of the WHFIT.

(20) A *trust interest holder* (TIH) is any person who holds a direct or indirect interest, including a beneficial interest, in a WHFIT at any time during the calendar year.

(21) *Trust sales proceeds* equal the amount paid to a WHFIT for the sale or disposition of an asset held by the WHFIT, including principal payments received by the WHFIT that completely retire a debt instrument (other than a final scheduled principal payment) and *pro-rata* partial principal prepayments described under §1.1275-2(f)(2). Trust sales proceeds do not include amounts paid for any interest income that would be required to be reported under §1.6045-1(d)(3).

(22) A *widely held fixed investment trust* (WHFIT) is an arrangement classified as a trust under §301.7701-4(c) of this chapter, provided that—

(i) The trust is a United States person under section 7701(a)(30)(E);

(ii) The beneficial owners of the trust are treated as owners under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code; and

(iii) At least one interest in the trust is held by a middleman.

(23) A *widely held mortgage trust* (WHMT) is a WHFIT, the assets of which consist only of one or more of the following—

- (i) Mortgages;
- (ii) Regular interests in a REMIC;
- (iii) Interests in another WHMT;
- (iv) Reasonably required reserve funds;
- (v) Amounts received on the assets described in paragraphs (b)(23)(i), (ii), (iii), and (iv) of this section pending distribution to TIHs; and

(vi) During a brief initial funding period, cash and short-term contracts for the purchase of the assets described in paragraphs (b)(23)(i), (ii), and (iii).

(c) *Trustee's obligation to report information*—(1) *In general*. Upon the request of a requesting person (as defined in paragraph (b)(16) of this section), a trustee of a WHFIT must report the information described in paragraph (c)(2) of this section to the requesting person. The trustee must determine such information in accordance with the following rules—

(i) *Calculation*. WHFIT information may be calculated in any manner that enables a requesting person to determine with reasonable accuracy the WHFIT items described in paragraph (c)(2) of this section that are attributable (or, if permitted under paragraphs (c)(2)(iv)(B) or (f)(2)(iii) of this section, distributed) to a beneficial owner for the taxable year

of that owner. The manner of calculation must generally conform with industry practice for calculating the WHFIT items described in paragraph (c)(2) of this section for the type of asset or assets held by the WHFIT, and must enable a requesting person to separately state any WHFIT item that, if taken into account separately by a beneficial owner, would result in an income tax liability different from that which would result if the owner did not take the item into account separately.

(ii) *Calculation period*—WHFIT information may be calculated on the basis of a calendar month, calendar quarter, or half or full calendar year, provided that a trustee uses the same calculation period for the life of the WHFIT and the information provided by the trustee meets the requirements of paragraph (c)(1)(i) of this section. Regardless of the calculation period chosen by the trustee, the trustee must provide information requested by a requesting person under paragraph (c)(5) on a calendar year basis. The trustee may provide additional information to requesting persons throughout the calendar year at the trustee's discretion.

(iii) *Accounting method*—(A) *General rule*. WHFIT information must be calculated and reported using the cash receipts and disbursements method of accounting unless another method is required by the Internal Revenue Code or regulations with respect to a specific trust item. Accordingly, a trustee must provide information necessary for TIHs to comply with the rules of subtitle A, chapter 1, subchapter P, part V, subpart A of the Internal Revenue Code, which require the inclusion of accrued amounts with respect to OID, and section 860B(b), which requires the inclusion of accrued amounts with respect to a REMIC regular interest.

(B) *Exception for WHFITs marketed predominantly to taxpayers on the accrual method*. If the trustee or the trust's sponsor knows or reasonably should know that a WHFIT is marketed primarily to accrual method TIHs and the WHFIT holds assets for which the timing of the recognition of income is materially affected by the use of the accrual method of accounting, the trustee must calculate and report trust information using the accrual method of accounting.

(iv) *Gross income requirement*. The amount of income required to be reported

by the trustee is the gross income (as defined in section 61) generated by the WHFIT's assets. Thus, in the case of a WHFIT that receives a payment of income from which an expense (or expenses) has been deducted, the trustee, in calculating the income to be reported under paragraph (c)(2)(ii) of this section, must report the income earned on the trusts assets unreduced by the deducted expense or expenses and separately report the deducted expense or expenses. See paragraph (c)(2)(iv) of this section regarding reporting with respect to sales and dispositions.

(2) *Information to be reported by all WHFITs.* With respect to all WHFITs—

(i) *Trust identification and calculation period chosen.* The trustee must report information identifying the WHFIT, including—

(A) The name of the WHFIT;

(B) The employer identification number of the WHFIT;

(C) The name and address of the trustee;

(D) The Committee on Uniform Security Identification Procedure (CUSIP) number, account number, serial number, or other identifying number of the WHFIT;

(E) The classification of the WHFIT as either a WHMT or NMWHFIT; and

(F) The calculation period used by the trustee.

(ii) *Items of income, expense, and credit.* The trustee must report information detailing—

(A) All items of gross income (including OID);

(B) All items of expense (including affected expenses); and

(C) All items of credit.

(iii) *Non pro-rata partial principal payments.* The trustee must report information detailing non *pro-rata* partial principal payments (as defined in paragraph (b)(13) of this section) received by the WHFIT.

(iv) *Asset sales and dispositions.* The trustee must report information regarding sales and dispositions of WHFIT assets as required in this paragraph (c)(2)(iv). For purposes of this paragraph (c)(2)(iv), a payment (other than a final scheduled payment) that completely retires a debt instrument (including a mortgage held by a WHMT) or a *pro-rata* prepayment on a debt instrument (see §1.1275-2(f)(2)) held by a WHFIT must be reported as a full or partial sale or disposition of the debt instrument.

(A) *General rule.* Except as provided in paragraph (c)(2)(iv)(B) (regarding the exception for certain NMWHFITs) or (c)(2)(iv)(C) (regarding the exception for certain WHMTs) of this section, the trustee must report with respect to each sale or disposition of a WHFIT asset—

(1) The date of each sale or disposition;

(2) Information that enables a requesting person to determine the amount of trust sales proceeds (as defined in paragraph (b)(21) of this section) attributable to a beneficial owner as a result of each sale or disposition; and

(3) Information that enables a beneficial owner to allocate, with reasonable accuracy, a portion of the owner's basis in its trust interest to each sale or disposition.

(B) *Exception for certain NMWHFITs.* If a NMWHFIT meets either the general WHFIT *de minimis* test of paragraph (c)(2)(iv)(D)(1) of this section for a calendar year, or the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report sufficient information to enable a requesting person to determine the amount of trust sales proceeds distributed to a beneficial owner during the calendar year with respect to each sale or disposition of a trust asset. The trustee also must provide requesting persons with a statement that the NMWHFIT is permitted to report under this paragraph (c)(2)(iv)(B).

(C) *Exception for certain WHMTs.* If a WHMT meets either of the *de minimis* tests of paragraph (c)(2)(iv)(D) of this section for the calendar year, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report information to enable a requesting person to determine the amount of trust sales proceeds attributable to a beneficial owner as a result of the sale or disposition. The trustee also must provide requesting persons with a statement that the WHMT is permitted to report under this paragraph (c)(2)(iv)(C).

(D) *De minimis tests—(1) General WHFIT de minimis test.* The general WHFIT *de minimis* test applies to a NMWHFIT or to a WHMT that does not meet the requirements for the special WHMT *de minimis* test in paragraph (c)(2)(iv)(D)(2) of this section. The general WHFIT *de minimis* test is satisfied

if trust sales proceeds for the calendar year are not more than five percent of the aggregate fair market value of all assets held by the trust as of the later of January 1<sup>st</sup> of that year or the trust's start-up date (as defined in paragraph (b)(19) of this section).

(2) *Special WHMT de minimis test.* A WHMT that meets the asset requirement of paragraph (g)(1)(ii)(E) of this section satisfies the special WHMT *de minimis* test in this paragraph (c)(2)(iv)(D)(2) if trust sales proceeds for the calendar year are not more than five percent of the aggregate outstanding principal balance of the WHMT (as defined in paragraph (g)(1)(iii)(D) of this section) as of the later of January 1<sup>st</sup> of that year or the trust's start-up date. For purposes of applying the special WHMT *de minimis* test in this paragraph (c)(2)(iv)(D)(2), amounts that result from the complete or partial payment of the outstanding principal balance of the mortgages held by the trust are not included in the amount of trust sales proceeds.

(3) *Effect of clean-up call.* If a WHFIT fails to meet either *de minimis* test described in this paragraph (c)(2)(iv)(D) solely as the result of a clean-up call, as defined in paragraph (b)(6) of this section, the WHFIT will be treated as having met the *de minimis* test.

(E) *Qualified NMWHFIT exception.* The qualified NMWHFIT exception is satisfied if a NMWHFIT has a start-up date that is before February 23, 2006 and the calendar year for which the trustee is reporting begins before January 1, 2011.

(v) *Redemptions and sales of WHFIT interests—(A) Redemptions—(1) In general.* Unless paragraph (c)(2)(v)(C) of this section (regarding certain NMWHFITs with dividend income) applies, for each date on which the amount of redemption proceeds for the redemption of a trust interest is determined, the trustee must provide information to enable a requesting person to determine—

(i) The redemption proceeds (as defined in paragraph (b)(15) of this section) per trust interest on that date;

(ii) The redemption asset proceeds (as defined in paragraph (b)(14) of this section) per trust interest on that date; and

(iii) The gross income that is attributable to the redeeming beneficial owner for the portion of the calendar year that the re-

deeming beneficial owner held its interest (including income earned by the WHFIT after the date of the last income distribution).

(2) *In-kind redemptions.* The value of the assets received with respect to an in-kind redemption (as defined in paragraph (b)(8) of this section) is not required to be reported under this paragraph (c)(2)(v)(A). Information regarding the income attributable to a redeeming beneficial owner must, however, be reported under paragraph (c)(2)(v)(A)(I)(iii) of this section.

(B) *Sale of a trust interest*—Unless paragraph (c)(2)(v)(C) (regarding certain NMWHFITs with dividend income) of this section applies, if a secondary market for trust interests in the WHFIT is established, the trustee must provide, for each day of the calendar year, information to enable a requesting person to determine—

(I) The sale asset proceeds (as defined in paragraph (b)(17) of this section) per trust interest on that date; and

(2) The gross income that is attributable to a selling beneficial owner and to a purchasing beneficial owner for the portion of the calendar year that each held the trust interest.

(C) *Exception for certain NMWHFITs with dividend income.* The trustee of a NMWHFIT to which this paragraph applies is not required to report the information described in paragraph (c)(2)(v)(A) (regarding redemptions) or (c)(2)(v)(B) (regarding sales) of this section. However, the trustee must report to requesting persons, for each date on which the amount of redemption proceeds to be paid for the redemption of a trust interest is determined, information that will enable requesting persons to determine the redemption proceeds per trust interest on that date. The trustee also must provide requesting persons with a statement that this paragraph applies to the NMWHFIT. This paragraph applies to a NMWHFIT if substantially all the income of the NMWHFIT consists of dividends (as defined in section 6042(b) and the regulations thereunder) and—

(I) The trustee is required by the governing document of the NMWHFIT to make distributions of all cash (less reasonably required reserve funds) held by the NMWHFIT no less frequently than monthly; or

(2) The qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section is satisfied.

(vi) *Information regarding bond premium.* The trustee generally must report information that enables a beneficial owner to determine, in any manner that is reasonably consistent with section 171, the amount of the beneficial owner's amortizable bond premium, if any, for each calendar year. However, if for the calendar year, a NMWHFIT meets either the general WHFIT *de minimis* test of paragraph (c)(2)(iv)(D)(I) of this section or the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, the trustee of such NMWHFIT is not required to report information regarding bond premium.

(vii) *Information regarding market discount.* The trustee generally must report information that enables a beneficial owner to determine, in any manner reasonably consistent with section 1276 (including section 1276(a)(3)), the amount of the market discount that has accrued during the calendar year. However, if for the calendar year, a NMWHFIT meets either the general WHFIT *de minimis* test of paragraph (c)(2)(iv)(D)(I) of this section or the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, the trustee of such NMWHFIT is not required to provide information regarding market discount.

(viii) *Other information.* The trustee must provide any other information necessary for a beneficial owner of a trust interest to report, with reasonable accuracy, the items (as defined in paragraph (b)(9) of this section) attributable to the portion of the trust treated as owned by the beneficial owner under section 671.

(3) *Identifying the representative who will provide trust information.* The trustee must identify a representative of the WHFIT who will provide the information specified in this paragraph (c). The trustee also may identify an Internet website at which the trustee will provide the information specified in this paragraph (c). This information must be —

(i) Printed in a publication generally read by, and available to, requesting persons;

(ii) Stated in the trust's prospectus; or

(iii) Posted at the trustee's Internet website.

(4) *Time and manner of providing information*—(i) *Time*—(A) *In general.* Except as provided in paragraph (c)(4)(i)(B) of this section, a trustee must provide the information specified in this paragraph (c) to requesting persons on or before the later of—

(I) The 30<sup>th</sup> day after the close of the calendar year to which the request relates; or

(2) The day that is 14 days after the receipt of the request.

(B) *Trusts holding interests in other WHFITs or in REMICs.* If the WHFIT holds an interest in one or more other WHFITs or holds one or more REMIC regular interests, or holds both, a trustee must provide the information specified in this paragraph (c) to requesting persons on or before the later of—

(I) The 44<sup>th</sup> day after the close of the calendar year to which the request relates; or

(2) The day that is 28 days after the receipt of the request.

(ii) *Manner.* The information specified in this paragraph (c) must be provided—

(A) By written statement sent by first class mail to the address provided by the requesting person;

(B) By causing it to be printed in a publication generally read by and available to requesting persons and by notifying requesting persons in writing of the publication in which it will appear, the date on which it will appear, and, if possible, the page on which it will appear;

(C) By causing it to be posted at an Internet website, provided the trustee identifies the website under paragraph (c)(3) of this section;

(D) By electronic mail provided that the requesting person requests that the trustee furnish the information by electronic mail and the person furnishes an electronic address; or

(E) By any other method agreed to by the trustee and the requesting person.

(iii) *Inclusion of information with respect to all calculation periods.* If a trustee calculates WHFIT information using a calculation period other than a calendar year, the trustee must provide information for each calculation period that falls within the calendar year requested.

(5) *Requesting information from a WHFIT*—(i) *In general.* Requesting per-

sons may request the information specified in this paragraph (c) from a WHFIT.

(ii) *Manner of requesting information.* In requesting WHFIT information, a requesting person must specify the WHFIT and the calendar year for which information is requested.

(iii) *Period of time during which a requesting person may request WHFIT information.* For the life of the WHFIT and for five years following the date of the WHFIT's termination, a requesting person may request the information specified in this paragraph (c) for any calendar year of the WHFIT's existence beginning with the 2007 calendar year.

(6) *Trustee's requirement to retain records.* For the life of the WHFIT and for five years following the date of termination of the WHFIT, the trustee must maintain in its records a copy of the information required to be provided to requesting persons under this paragraph (c) for each calendar year beginning with the 2007 calendar year. For a period of five years following the close of the calendar year to which the data pertains, the trustee also must maintain in its records such supplemental data as may be necessary to establish that the information provided to requesting persons is correct and meets the requirements of this paragraph (c).

(d) *Form 1099 requirement for trustees and middlemen—(1) Obligation to file Form 1099 with the IRS—(i) In general.* Except as provided in paragraphs (d)(1)(ii) and (iii) of this section—

(A) The trustee must file with the IRS the appropriate Forms 1099, reporting the information specified in paragraph (d)(2) of this section with respect to any TIH who holds an interest in the WHFIT directly and not through a middleman; and

(B) Every middleman must file with the IRS the appropriate Forms 1099, reporting the information specified in paragraph (d)(2) of this section with respect to any TIH on whose behalf or account the middleman holds an interest in the WHFIT or acts as an intermediary.

(ii) *Forms 1099 not required for exempt recipients—(A) In general.* A Form 1099 is not required with respect to a TIH who is an exempt recipient (as defined in paragraph (b)(7) of this section), unless the trustee or middleman backup withholds under section 3406 on payments made to an exempt recipient (because, for ex-

ample, the exempt recipient has failed to furnish a Form W-9 on request). If the trustee or middleman backup withholds, then the trustee or middleman is required to file a Form 1099 under this paragraph (d) unless the trustee or middleman refunds the amount withheld in accordance with §31.6413(a)-3 of this chapter.

(B) *Exempt recipients must include WHFIT information in computing taxable income.* A beneficial owner who is an exempt recipient must obtain WHFIT information and must include the items (as defined in paragraph (b)(9) of this section) of the WHFIT in computing its taxable income on its federal income tax return. Paragraphs (c)(3) and (h) of this section provide rules for exempt recipients to obtain information from a WHFIT.

(iii) *Reporting and withholding with respect to foreign persons.* The items of the WHFIT attributable to a TIH who is not a United States person must be reported, and amounts must be withheld, as provided under subtitle A, chapter 3 of the Internal Revenue Code (sections 1441 through 1464) and the regulations thereunder and not reported under this paragraph (d).

(2) *Information to be reported—(i) Determining amounts to be provided on Forms 1099.* The amounts reported to the IRS for a calendar year by a trustee or middleman on the appropriate Form 1099 must be consistent with the information provided by the trustee under paragraph (c) of this section and must reflect with reasonable accuracy the amount of each item required to be reported on a Form 1099 that is attributable (or if permitted under paragraphs (d)(2)(ii)(D) and (E) of this section, distributed) to the TIH. If the trustee, in providing WHFIT information, uses the safe harbors in paragraph (f)(1) or (g)(1) of this section, then the trustee or middleman must calculate the information to be provided to the IRS on the Forms 1099 in accordance with paragraph (f)(2) or (g)(2) of this section, as appropriate.

(ii) *Information to be provided on Forms 1099.* The trustee or middleman must include on the appropriate Forms 1099:

(A) *Taxpayer information.* The name, address, and taxpayer identification number of the TIH;

(B) *Information regarding the person filing the Form 1099.* The name, address, taxpayer identification number, and tele-

phone number of the person required to file the Form 1099;

(C) *Gross income.* All items of gross income of the WHFIT attributable to the TIH for the calendar year (including OID and all amounts of income attributable to a selling, purchasing, or redeeming TIH for the portion of the calendar year that the TIH held its interest (unless paragraph (c)(2)(v)(C) of this section (regarding certain NMWHFITs with dividend income) applies));

(D) *Non pro-rata partial principal payments.* All non *pro-rata* partial principal payments (as defined in paragraph (b)(13) of this section) received by the WHFIT that are attributable (or distributed, in the case of a trustee or middleman reporting under paragraph (f)(2)(iii) of this section) to the TIH;

(E) *Trust sales proceeds.* All trust sales proceeds (as defined in paragraph (b)(21) of this section) that are attributable to the TIH for the calendar year, if any, or, if paragraph (c)(2)(iv)(B) of this section (regarding certain NMWHFITs) applies, the amount of trust sales proceeds distributed to the TIH for the calendar year;

(F) *Reporting redemptions.* All redemption asset proceeds (as defined in paragraph (b)(14) of this section) paid to the TIH for the calendar year, if any, or, if paragraph (c)(2)(v)(C) of this section (regarding certain NMWHFITs with dividend income) applies, all redemption proceeds (as defined in paragraph (b)(15) of this section) paid to the TIH for the calendar year;

(G) *Reporting sales of a trust interest on a secondary market.* All sales asset proceeds (as defined in paragraph (b)(17) of this section) paid to a TIH for the sale of a trust interest or interests on a secondary market established for the WHFIT for the calendar year, if any, or, if paragraph (c)(2)(v)(C) of this section (regarding certain NMWHFITs with dividend income) applies, all sales proceeds (as defined in paragraph (b)(18) of this section) paid to the TIH for the calendar year; and

(H) *Other information.* Any other information required by the Form 1099.

(3) *Time and manner of filing Forms 1099—(i) Time and place.* The Forms 1099 required to be filed under this paragraph (d) must be filed on or before February 28 (March 31, if filed electronically) of the year following the year for which

the Forms 1099 are being filed. The returns must be filed with the appropriate Internal Revenue Service Center, at the address listed in the instructions for the Forms 1099. For extensions of time for filing returns under this section, see §1.6081-1, the instructions for the Forms 1099, and applicable revenue procedures (see §601.601(d)(2) of this chapter). For magnetic media filing requirements, see §301.6011-2 of this chapter.

(ii) *Reporting trust sales proceeds, redemption asset proceeds, redemption proceeds, sale asset proceeds, sales proceeds and non pro-rata partial principal payments*—(A) *Form to be used.* Trust sales proceeds, redemption asset proceeds, redemption proceeds, sale asset proceeds, sales proceeds, and non *pro-rata* partial principal payments are to be reported on the same type of Form 1099 as that required for reporting gross proceeds under section 6045.

(B) *Appropriate reporting for in-kind redemptions.* The value of the assets distributed with respect to an in-kind redemption is not required to be reported to the IRS. Unless paragraph (c)(2)(v)(C) of this section applies, the trustee or middleman must report the gross income attributable to the redeemed trust interest for the calendar year up to the date of the redemption under paragraph (d)(2)(ii)(C) of this section.

(e) *Requirement to furnish a written tax information statement to the TIH*—(1) *In general.* Every trustee or middleman required to file appropriate Forms 1099 under paragraph (d) of this section with respect to a TIH must furnish to that TIH (the person whose identifying number is required to be shown on the form) a written tax information statement showing the information described in paragraph (e)(2) of this section. The amount of a trust item reported to a TIH under this paragraph (e) must be consistent with the information reported to the IRS with respect to the TIH under paragraph (d) of this section. Information provided in this written statement must be determined in accordance with the rules provided in paragraph (d)(2)(i) of this section (regardless of whether the information was required to be provided on a Form 1099). Further, the trustee or middleman must separately state on the written tax information statement any items that, if taken into account separately by

that TIH, would result in an income tax liability that is different from the income tax liability that would result if the items were not taken into account separately.

(2) *Information required.* For the calendar year, the written tax information statement must meet the following requirements:

(i) *WHFIT information.* The written tax information statement must include the name of the WHFIT and the identifying number of the WHFIT;

(ii) *Identification of the person furnishing the statement.* The written tax information statement must include the name, address, and taxpayer identification number of the person required to furnish the statement;

(iii) *Items of income, expense, and credit.* The written tax information statement must include information regarding the items of income (that is, the information required to be reported to the IRS on Forms 1099), expense (including affected expenses), and credit that are attributable to the TIH for the calendar year;

(iv) *Non pro-rata partial principal payments.* The written tax information statement must include the information required to be reported to the IRS on Forms 1099 under paragraph (d)(2)(ii)(D) of this section (regarding the non *pro-rata* partial principal payments that are attributable (or distributed, in the case of a trustee or middleman reporting under paragraph (f)(2)(iii) of this section) to the TIH for the calendar year).

(v) *Asset sales and dispositions*—(A) *General rule.* Unless paragraph (c)(2)(iv)(B) (regarding the exception for certain NMWHFITs) or (c)(2)(iv)(C) (regarding the exception for certain WHMTs) of this section applies, the written tax information statement must include, with respect to each sale or disposition of a WHFIT asset for the calendar year—

(1) The date of sale or disposition;

(2) Information regarding the trust sales proceeds that are attributable to the TIH as a result of the sale or disposition; and

(3) Information that will enable the TIH to allocate with reasonable accuracy a portion of the TIH's basis in the TIH's trust interest to the sale or disposition.

(B) *Special rule for certain NMWHFITs and WHMTs.* In the case of a NMWHFIT to which paragraph (c)(2)(iv)(B) of this section applies or in the case of a WHMT

to which paragraph (c)(2)(iv)(C) of this section applies, the written tax information statement must include, with respect to asset sales and dispositions, only the information required to be reported to the IRS on Form 1099 under paragraph (d)(2)(ii)(E) of this section.

(vi) *Redemption or sale of a trust interest.* The written tax information statement must include the information required to be reported to the IRS on Forms 1099 under paragraphs (d)(2)(ii)(F) and (G) of this section (regarding the sales and redemptions of trust interests made by the TIH for the calendar year);

(vii) *Information regarding market discount and bond premium.* The written tax information statement must include the information required to be reported by the trustee under paragraphs (c)(2)(vi) and (vii) of this section (regarding bond premium and market discount);

(viii) *Other information.* The written tax information statement must include any other information necessary for the TIH to report, with reasonable accuracy for the calendar year, the items (as defined in paragraph (b)(9) of this section) attributable to the portion of the trust treated as owned by the TIH under section 671. The written tax information statement may include information with respect to a trust item on a per trust interest basis if the trustee has reported (or calculated) the information with respect to that item on a per trust interest basis and information with respect to that item is not required to be reported on a Form 1099; and

(ix) *Required statement.* The written tax information statement must inform the TIH that the items of income, deduction, and credit, and any other information shown on the statement must be taken into account in computing the taxable income and credits of the TIH on the Federal income tax return of the TIH. If the written tax information statement reports that an amount of qualified dividend income is attributable to the TIH, the written tax information statement also must inform the TIH that the TIH must meet the requirements of section 1(h)(11)(B)(iii) to treat the dividends as qualified dividends.

(3) *Due date and other requirements.* The written tax information statement must be furnished to the TIH on or before March 15 of the year following the calen-

dar year for which the statement is being furnished.

(4) *Requirement to retain records.* For a period of no less than five years from the due date for furnishing the written tax information statement, a trustee or middleman must maintain in its records a copy of any written tax information statement furnished to a TIH, and such supplemental data as may be required to establish the correctness of the statement.

(f) *Safe harbor for providing information for certain NMWHFITs—(1) Safe harbor for trustee reporting of NMWHFIT information.* The trustee of a NMWHFIT that meets the requirements of paragraph (f)(1)(i) of this section is deemed to satisfy paragraph (c)(1)(i) of this section, if the trustee calculates and provides WHFIT information in the manner described in this paragraph (f) and provides a statement to a requesting person giving notice that information has been calculated in accordance with this paragraph (f)(1).

(i) *In general—(A) Eligibility to report under this safe harbor.* Only NMWHFITs that meet the requirements set forth in paragraphs (f)(1)(i)(A)(1) and (2) of this section may report under this safe harbor.

(1) Substantially all of the NMWHFIT's income is from dividends (as defined in section 6042(b) and the regulations thereunder) or interest (as defined in section 6049(b) and the regulations thereunder); and

(2) All trust interests have identical value and rights

(B) *Consistency Requirements.* The trustee must—

(1) Calculate all trust items subject to the safe harbor consistent with the safe harbor; and,

(2) Report under this paragraph (f)(1) for the life of the NMWHFIT; or, if the NMWHFIT has a start-up date before January 1, 2007, the NMWHFIT must begin reporting under this paragraph (f)(1) as of January 1, 2007 and must continue to report under this paragraph for the life of the NMWHFIT.

(ii) *Reporting NMWHFIT income and expenses.* A trustee must first determine the total amount of NMWHFIT distributions (both actual and deemed) for the calendar year and then express each income or expense item as a fraction of the total amount of NMWHFIT distributions. These fractions (hereinafter referred to as

factors) must be accurate to at least four decimal places.

(A) *Step One: Determine the total amount of NMWHFIT distributions for the calendar year.* The trustee must determine the total amount of NMWHFIT distributions (actual and deemed) for the calendar year. If the calculation of the total amount of NMWHFIT distributions under this paragraph (f)(1)(ii)(A) results in a zero or a negative number, the trustee may not determine income and expense information under this paragraph (f)(1)(ii)(A) (but may report all other applicable items under this paragraph (f)(1)). The total amount of NMWHFIT distributions equals the amount of NMWHFIT funds paid out to all TIHs (including all trust sales proceeds, all principal receipts, and all redemption proceeds) for the calendar year—

(1) Increased by—

(i) All amounts that would have been distributed during the calendar year, but were instead reinvested pursuant to a reinvestment plan; and

(ii) All cash held for distribution to TIHs as of December 31 of the year for which the trustee is reporting; and

(2) Decreased by—

(i) All cash distributed during the current year that was included in a year-end cash allocation factor (see paragraph (f)(1)(ii)(C)(2) of this section) for a prior year;

(ii) All redemption asset proceeds paid for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, all redemption proceeds paid for the calendar year;

(iii) All trust sales proceeds distributed during the calendar year; and

(iv) All non *pro-rata* partial principal payments distributed during the calendar year.

(3) For the purpose of determining the amount of all redemption asset proceeds or redemption proceeds paid for the calendar year with respect to paragraph (f)(1)(ii)(A)(2)(ii) of this section, the value of the assets (not including cash) distributed with respect to an in-kind redemption is disregarded. Any cash distributed as part of the redemption must be included in the total amount of NMWHFIT distributions.

(B) *Step Two: Determine factors that express the ratios of NMWHFIT income and expenses to the total amount of*

*NMWHFIT distributions.* The trustee must determine factors that express the ratios of NMWHFIT income and expenses to the total amount of NMWHFIT distributions as follows:

(1) *Income factors.* For each item of income generated by the NMWHFIT's assets for the calendar year, the trustee must determine the ratio of the gross amount of that item of income to the total amount of NMWHFIT distributions for the calendar year; and

(2) *Expense factors.* For each item of expense paid by a NMWHFIT during the calendar year, the trustee must determine the ratio of the gross amount of that item of expense to the total amount of NMWHFIT distributions for the calendar year.

(C) *Step Three: Determine adjustments for reconciling the total amount of NMWHFIT distributions (determined under Step One) with amounts actually paid to TIHs.* Paragraph (f)(1)(ii)(B) of this section (Step Two) requires an item of income or expense to be expressed as a ratio of that item to the total amount of NMWHFIT distributions as determined in paragraph (f)(1)(ii)(A) of this section (Step One). A TIH's share of the total amount of NMWHFIT distributions may differ from the amount actually paid to that TIH. A trustee, therefore, must provide information that can be used to compute a TIH's share of the total amount of NMWHFIT distributions based on the amount actually paid to the TIH. A trustee satisfies this requirement by providing a current year-end cash allocation factor, a prior year cash allocation factor, and the date on which the prior year cash was distributed to TIHs (prior year cash distribution date).

(1) *The current year-end cash allocation factor.* The current year-end cash allocation factor is the amount of cash held for distribution to TIHs by the NMWHFIT as of December 31 of the calendar year for which the trustee is reporting, divided by the number of trust interests outstanding as of that date.

(2) *The prior year cash allocation factor.* The prior year cash allocation factor is the amount of the distribution during the calendar year for which the trustee is reporting that was included in determining a year-end cash allocation factor for a prior year, divided by the number of trust interests outstanding on the date of the distribution.

(iii) *Reporting non pro-rata partial principal payments under the safe harbor.* The trustee must provide a list of dates on which non *pro-rata* partial principal payments were distributed by the trust, and the amount distributed, per trust interest.

(iv) *Reporting sales and dispositions of NMWHFIT assets under the safe harbor—(A) NMWHFITs that must report under the general rule—(1) In general.* If a NMWHFIT must report under the general rule of paragraph (c)(2)(iv)(A) of this section, the trustee must provide a list of dates (from earliest to latest) on which sales or dispositions of NMWHFIT assets occurred during the calendar year for which the trustee is reporting and, for each date identified, provide—

(i) The trust sales proceeds received by the trust, per trust interest, with respect to the sales and dispositions, on that date;

(ii) The trust sales proceeds distributed to TIHs, per trust interest, with respect to the sales and dispositions on that date, and the date that the trust sales proceeds were distributed to the TIHs; and

(iii) The ratio (expressed as a percentage) of the assets sold or disposed of on that date to all assets held by the NMWHFIT.

(2) *Determination of the ratio of the assets sold or disposed of—*

(i) If a NMWHFIT terminates within twenty-four months of its start-up date, the ratio of the assets sold or disposed of on that date to all assets held by the NMWHFIT is based on the fair market value of the NMWHFIT's assets as of the start-up date; or

(ii) If a NMWHFIT terminates more than twenty-four months after its start-up date, the ratio of the assets sold or disposed of on that date to all assets held by the NMWHFIT is based on the fair market value of the NMWHFIT's assets as of the date of the sale or disposition.

(B) *NMWHFITs excepted from the general rule.* If paragraph (c)(2)(iv)(B) of this section applies to the NMWHFIT, the trustee must provide a list of dates on which trust sales proceeds were distributed, and the amount of trust sales proceeds, per trust interest, that were distributed on that date. The trustee also must also provide requesting persons with the statement required by paragraph (c)(2)(iv)(B) of this section.

(v) *Reporting redemptions under the safe harbor—(A) In general.* The trustee must:

(1) Provide a list of dates on which the amount of redemption proceeds paid for the redemption of a trust interest was determined and the amount of the redemption asset proceeds determined per trust interest on that date, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the amount of redemption proceeds determined on that date; or

(2) Provide to each requesting person that held (either for its own behalf or for the behalf of a TIH) a trust interest that was redeemed during the calendar year, the date of the redemption and the amount of the redemption asset proceeds per trust interest determined on that date, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the amount of the redemption proceeds determined for that date; and

(B) *Paragraph (c)(2)(v)(C) statement.* If paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the trustee must provide a statement to requesting persons to the effect that the trustee is providing information consistent with paragraph (c)(2)(v)(C) of this section.

(vi) *Reporting the sale of a trust interest under the safe harbor.* If paragraph (c)(2)(v)(C) of this section does not apply to the NMWHFIT, the trustee must provide, for each day of the calendar year, the amount of cash held for distribution, per trust interest, by the NMWHFIT on that date. If the trustee is able to identify the date on which trust interests were sold on the secondary market, the trustee alternatively may provide information for each day on which sales of trust interests occurred rather than for each day during the calendar year. If paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the trustee is not required to provide any information under this paragraph (f)(1)(vi), other than a statement that the NMWHFIT meets the requirements to report under paragraph (c)(2)(v)(C) of this section.

(vii) *Reporting OID information under the safe harbor.* The trustee must provide, for each calculation period, the average aggregate daily accrual of OID per \$1,000 of original principal amount.

(viii) *Reporting market discount information under the safe harbor—(A) In general.* If the trustee of a NMWHFIT is required to provide information re-

garding market discount under paragraph (c)(2)(vii) of this section, the trustee must provide the information required under paragraph (f)(1)(iv)(A)(1)(iii) of this section. If the trustee is not required to provide market discount information under paragraph (c)(2)(vii) of this section (because the NMWHFIT meets either the *de minimis* test of paragraph (c)(2)(iv)(D) of this section, or the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section), the trustee is not required under this paragraph (f) to provide any information regarding market discount.

(B) *Reporting market discount information under the safe harbor when the yield of the debt obligations held by the WHFIT is expected to be affected by prepayments.* [Reserved.]

(ix) *Reporting bond premium information under the safe harbor.* [Reserved.]

(x) *Reporting additional information.* If a requesting person cannot use the information provided by the trustee under paragraphs (f)(1)(ii) through (ix) of this section to determine with reasonable accuracy the trust items that are attributable to a TIH, the requesting person must request, and the trustee must provide, additional information to enable the requesting person to determine the trust items that are attributable to the TIH. See, for example, paragraph (f)(2)(ii)(A)(4) of this section which requires a middleman to request additional information from the trustee when the total amount of WHFIT distributions attributable to a TIH equals zero or less.

(2) *Use of information provided by trustees under the safe harbor for NMWHFITs—(i) In general.* If a trustee reports NMWHFIT items in accordance with paragraph (f)(1) of this section, the information provided with respect to those items on the Forms 1099 required under paragraph (d) of this section to be filed with the IRS and on the statement required under paragraph (e) of this section to be furnished to the TIH must be determined as provided in this paragraph (f)(2).

(ii) *Determining NMWHFIT income and expense under the safe harbor.* The trustee or middleman must determine the amount of each item of income and expense attributable to a TIH as follows—

(A) *Step One: Determine the total amount of NMWHFIT distributions attributable to the TIH.* To determine the total amount of NMWHFIT distributions



attributable to a TIH for the calendar year, the total amount paid to, or credited to the account of, the TIH during the calendar year (including amounts paid as trust sales proceeds, partial non *pro-rata* principal payments, redemption proceeds, and sales proceeds) is—

(I) Increased by—

(i) All amounts that would have been distributed during the calendar year to the TIH, but that were reinvested pursuant to a reinvestment plan (unless another person (for example, the custodian of the reinvestment plan) is responsible for reporting these amounts under paragraph (d) of this section); and

(ii) An amount equal to the current year-end cash allocation factor (provided by the trustee in accordance with paragraph (f)(1)(ii)(C)(I) of this section) multiplied by the number of trust interests held by the TIH as of December 31 of the calendar year for which the trustee is reporting; and

(2) Decreased by—

(i) An amount equal to the prior year cash allocation factor (provided by the trustee in accordance with paragraph (f)(1)(ii)(C)(2) of this section) multiplied by the number of trust interests held by the TIH on the prior year cash distribution date;

(ii) An amount equal to all redemption asset proceeds paid to the TIH for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, an amount equal to all redemption proceeds paid to the TIH for the calendar year;

(iii) An amount equal to all sale asset proceeds paid to the TIH for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies to the NMWHFIT, the amount of sales proceeds paid to the TIH for the calendar year;

(iv) In the case of a TIH that purchased a trust interest in a NMWHFIT to which paragraph (c)(2)(v)(C) of this section does not apply, an amount equal to the cash held for distribution per trust interest on the date that the TIH acquired its interest, multiplied by the trust interests acquired on that date;

(v) The amount of the trust sales proceeds distributed to the TIH, calculated as provided in paragraph (f)(2)(iv)(A)(3) of this section; and

(vi) The amount of non *pro-rata* partial principal prepayments distributed to

the TIH during the calendar year, calculated as provided in paragraph (f)(2)(iii) of this section.

(3) *Treatment of in-kind distributions under this paragraph (f)(2)(ii).* The value of the assets (not including cash) received with respect to an in-kind redemption is not included in the amount used in paragraph (f)(2)(ii)(A)(2)(ii) of this section. The cash distributed as part of the redemption, however, must be included in the total amount of NMWHFIT distributions paid to the TIH.

(4) *The total amount of distributions attributable to a TIH calculated under this paragraph (f)(2)(ii)(A) equals zero or less.* If the total amount of distributions attributable to a TIH, calculated under this paragraph (f)(2)(ii)(A), equals zero or less, the trustee or middleman may not report the income and expense attributable to the TIH under this paragraph (f)(2)(ii). The trustee or middleman must request additional information from the trustee of the NMWHFIT to enable the trustee or middleman to determine with reasonable accuracy the items of income and expense that are attributable to the TIH. The trustee or middleman must report the other items subject to paragraph (f)(1) of this section in accordance with this paragraph (f)(2).

(B) *Step Two: Apply the factors provided by the trustee to determine the items of income and expense that are attributable to the TIH.* The amount of each item of income (other than OID) and each item of expense attributable to a TIH is determined as follows—

(1) *Application of income factors.* For each income factor, the trustee or middleman must multiply the income factor by the total amount of NMWHFIT distributions attributable to the TIH for the calendar year (as determined in paragraph (f)(2)(ii)(A) of this section).

(2) *Application of expense factors.* For each expense factor, the trustee or middleman must multiply the expense factor by the total amount of NMWHFIT distributions attributable to the TIH for the calendar year (as determined in paragraph (f)(2)(ii)(A) of this section).

(iii) *Reporting non pro-rata partial principal payments under the safe harbor.* To determine the amount of non *pro-rata* partial principal payments that are distributed to a TIH for the calendar year, the trustee or middleman must aggregate the

amount of non *pro-rata* partial principal payments distributed to a TIH for each day that non *pro-rata* principal payments were distributed. To determine the amount of non *pro-rata* principal payments that are distributed to a TIH on each distribution date, the trustee or middleman must multiply the amount of non-*pro rata* principal payments per trust interest distributed on that date by the number of trust interests held by the TIH.

(iv) *Reporting sales and dispositions of NMWHFIT assets under the safe harbor—(A) Reporting under the safe harbor if the general rules apply to the NMWHFIT.* Unless paragraph (c)(2)(iv)(B) of this section applies, the trustee or middleman must comply with paragraphs (f)(2)(iv)(A)(1), (2), and (3) of this section.

(1) *Form 1099.* The trustee or middleman must report the amount of trust sales proceeds attributable to the TIH for the calendar year on Form 1099. To determine the amount of trust sales proceeds attributable to a TIH for the calendar year, the trustee or middleman must aggregate the total amount of trust sales proceeds attributable to the TIH for each date on which the NMWHFIT sold or disposed of an asset or assets. To determine the total amount of trust sales proceeds attributable to a TIH for each date that the NMWHFIT sold or disposed of an asset or assets, the trustee or middleman multiplies the amount of trust sales proceeds received by the NMWHFIT per trust interest on that date by the number of trust interests held by the TIH on that date.

(2) *The written tax information statement furnished to the TIH.* The written tax information statement required to be furnished to the TIH under paragraph (e) of this section must include a list of dates (in order, from earliest to latest) on which sales or dispositions of trust assets occurred during the calendar year and provide, for each date identified—

(i) The trust sales proceeds received by the trust, per trust interest, with respect to the sales or dispositions of trust assets on that date; and

(ii) The information provided by the trustee under paragraph (f)(1)(iv)(B)(2) of this section regarding the ratio of the assets sold or disposed of on that date to all the assets of the NMWHFIT held on that date, prior to such sale or disposition.

(3) *Calculating the total amount of trust sales proceeds distributed to the TIH.* To determine the total amount of NMWHFIT distributions attributable to a TIH, the trustee or middleman must calculate the amount of trust sales proceeds distributed to the TIH for the calendar year. (See paragraph (f)(2)(ii)(A)(2)(v) of this section.) To determine the amount of trust sales proceeds distributed to a TIH for the calendar year, the trustee or middleman must aggregate the total amount of trust sales proceeds distributed to the TIH for each date on which the NMWHFIT distributed trust sales proceeds. To determine the total amount of trust sales proceeds distributed to a TIH for each date that the NMWHFIT distributed trust sales proceeds, the trustee or middleman must multiply the amount of trust sales proceeds distributed by the NMWHFIT per trust interest on that date by the number of trust interests held by the TIH on that date.

(B) *Reporting under the safe harbor if paragraph (c)(2)(iv)(B) of this section applies to the NMWHFIT.* If paragraph (c)(2)(iv)(B) of this section applies, the trustee or middleman must calculate, in the manner provided in paragraph (f)(2)(iv)(A)(3) of this section, the amount of trust sales proceeds distributed to the TIH for the calendar year. The trustee or middleman must report this amount on the Form 1099 filed for the TIH and on the written tax information statement furnished to the TIH.

(v) *Reporting redemptions under the safe harbor—*(A) Except as provided in paragraph (f)(2)(v)(B) or (C) of this section, if the trustee has provided a list of dates for which the amount of the redemption proceeds to be paid for the redemption of a trust interest was determined and the redemption asset proceeds paid for that date, the trustee or middleman must multiply the redemption asset proceeds determined per trust interest for that date by the number of trust interests redeemed by the TIH on that date.

(B) If paragraph (c)(2)(v)(C) of this section applies, and the trustee has provided a list of dates for which the amount of the redemption proceeds to be paid for the redemption of a trust interest was determined and the redemption proceeds determined per trust interest on each date, the trustee or middleman must multiply the redemption proceeds per trust interest for each date by

the number of trust interests redeemed by the TIH on that date.

(C) If the trustee has provided the requesting person with information regarding the redemption asset proceeds paid for each redemption of a trust interest held by the middleman for the calendar year, or if paragraph (c)(2)(v)(C) of this section applies and the trustee has provided the amount of redemption proceeds paid for each redemption of a trust interest held by the middleman during the calendar year, the requesting person may use this information to determine the amount of the redemption asset proceeds or redemption proceeds paid to the TIH for the calendar year.

(vi) *Reporting sales of trust interests under the safe harbor—*(A) Except as provided in paragraph (f)(2)(vi)(B) of this section, the trustee or middleman must subtract the amount of cash held for distribution per trust interest on the date of the sale from the sales proceeds paid to the TIH to determine the sale asset proceeds that are to be reported to the TIH for each sale of a trust interest.

(B) If paragraph (c)(2)(v)(C) of this section applies, the trustee or middleman must report the sales proceeds paid to the TIH as a result of each sale of a trust interest.

(vii) *Reporting OID information under the safe harbor—*The trustee or middleman must aggregate the amounts of OID that are allocable to each trust interest held by a TIH for each calculation period. The amount of OID that is allocable to a trust interest, with respect to each calculation period, is determined by multiplying—

(A) The product of the OID factor and the original principal balance of the trust interest, divided by 1,000; by

(B) The number of days during the calculation period in that calendar year that the TIH held the trust interest.

(viii) *Reporting market discount information under the safe harbor—*(A) Except as provided in paragraph (f)(2)(viii)(B) of this section, the trustee or middleman must provide the TIH with the information provided under paragraph (f)(1)(viii) of this section.

(B) If paragraph (c)(2)(iv)(B) of this section applies, the trustee and middleman are not required under this paragraph (f)(2) to provide any information regarding market discount.

(ix) *Reporting bond premium information under the safe harbor.* [Reserved]

(3) *Example of the use of the safe harbor for NMWHFITs.* The following example illustrates the use of the factors in this paragraph (f) to calculate and provide NMWHFIT information:

*Example:* (i) *Facts—*(A) *In general—*(1) Trust is a NMWHFIT that holds common stock in ten different corporations and has 100 trust interests outstanding. The start-up date for Trust is December 15, 2006, and the termination date for Trust is March 15, 2008. The agreement governing Trust requires Trust to distribute the cash held by Trust reduced by accrued but unpaid expenses on April 15, July 15, and October 15 of the 2007 calendar year. The agreement also provides that the trust interests will be redeemed by the Trust for an amount equal to the value of the trust interest, as of the close of business, on the day that the trust interest is tendered for redemption. There is no reinvestment plan. A secondary market for interests in Trust will be created by Trust's sponsor and Trust's sponsor will provide Trustee with a list of dates on which sales occurred on this secondary market.

(2) As of December 31, 2006, Trust holds \$12x for distribution to TIHs on the next distribution date and has no accrued but unpaid expenses. Trustee includes the \$12x in determining the year-end cash allocation factor for December 31, 2006.

(B) *Events occurring during the 2007 calendar year—*(1) As of January 1, 2007, Broker1 holds ten trust interests in Trust in street name for each of J and A and Broker2 holds ten trust interests in Trust in street name for S, J, A, and S are individual, cash method taxpayers.

(2) As of January 1, 2007, the fair market value of the Trust's assets equals \$10,000x.

(3) During 2007, Trust receives \$588x in dividend income. Trustee determines that \$400x of the dividend income received during 2007 meets the definition of a qualified dividend in section 1(h)(11)(B)(i) and the holding period requirement in section 1(h)(11)(B)(iii) with respect to the Trust. During 2007, Trust also receives \$12x in interest income from investment of Trust's funds pending distribution to TIHs, and pays \$45x in expenses, all of which are affected expenses.

(4) On April 15, 2007, Trustee distributes \$135x, which includes the \$12x included in determining the year-end cash allocation factor for December 31, 2006. As a result of the distribution, Broker1 credits J's account and A's account for \$13.50x each. Broker2 credits S's account for \$13.50x.

(5) On June 1, 2007, Trustee sells shares of stock for \$1000x to preserve the soundness of the trust. The stock sold on June 1, 2007, equaled 20% of the aggregate fair market value of the assets held by Trust on the start-up date of Trust.

(6) On July 15, 2007, Trustee distributes \$1,135x, which includes the \$1,000x of trust sales proceeds received by Trust for the sale of assets on June 1, 2007. As a result of the distribution, Broker1 credits J's account and A's account for \$113.50x each. Broker2 credits S's account for \$113.50x.

(7) On September 30, 2007, J, through Trust's sponsor, sells a trust interest to S for \$115.35x. Trustee determines that the cash held for distribution per trust interest on September 30 is \$1.35x. As a

result of the sale, Broker1 credits *J*'s account for \$115.35x.

(8) On October 15, 2007, Trustee distributes \$123x. As a result of the distribution, Broker1 credits *J*'s account for \$11.07x and *A*'s account for \$12.30x. Broker2 credits *S*'s account for \$13.53x.

(9) On December 10, 2007, *J* tenders a trust interest to Trustee for redemption through Broker1. Trustee determines that the amount of the redemption proceeds to be paid for a trust interest that is tendered for redemption on December 10, 2007, is \$116x, of which \$115x represents the redemption asset proceeds. On December 12, 2007, Trustee sells shares of common stock for \$115x to have sufficient

cash to pay *J*'s redemption proceeds. The stock sold on December 12, 2007, equaled 2% of the aggregate fair market value of all the assets of Trust as of the start up date. On December 17, 2007, Trustee pays the \$116x redemption proceeds (including the \$115x trust sales proceeds received by Trust for the sale of the stock on December 12) to Broker1 on *J*'s behalf, and Broker1 in turn pays \$116x to *J* as redemption proceeds.

(10) On December 10, 2007, *J*, through Trust's sponsor, also sells a trust interest to *S* for \$116x. Trustee determines that the cash held for distribution per trust interest on that date is \$1x. As a result of the sale, Broker1 credits *J*'s account for \$116x.

(11) As of December 31, 2007, Trust holds cash of \$173x and has incurred \$15x in expenses that Trust has not paid. *J* is the only TIH to redeem a trust interest during the calendar year. The sale of two trust interests in Trust by *J* to *S* are the only sales that occurred on the secondary market established by Trust's sponsor during 2007.

(ii) *Trustee reporting*—(A) *Summary of information provided by Trustee*. Trustee meets the requirements of paragraph (f)(1) of this section if Trustee provides the following information to requesting persons:

(1) Income and expense information:

Factor for ordinary dividend income	0.3481
Factor for qualified dividend income	0.7407
Factor for interest income	0.0222
Factor for affected expenses	0.0833
Current year-end cash allocation factor	1.5960
Prior year cash allocation factor	0.1200
Prior year cash distribution date	April 15

(2) Information regarding asset sales and distributions:

<u>Date of sale</u>	<u>Trust sales proceeds Received</u>	<u>Trust sales proceeds Distributed and Date Distributed</u>	<u>% of Trust Sold</u>
June 1	\$10.0000x	\$10.0000x (July 15)	20%
December 12	\$ 1.1616x	\$ 0.0000x	2%

(3) Information regarding redemptions:

<u>Date</u>	<u>Redemption asset proceeds</u>
December 10	\$115x

(4) Information regarding sales of trust interests:

<u>Date</u>	<u>Cash held for distribution per trust interest</u>
September 30	\$1.35x
December 10	1.00x

(B) *Trustee determines this information as follows:*

(1) *Step One: Trustee determines the total amount of NMWHFIT distributions for the calendar year.* The total amount of NMWHFIT distributions (actual and deemed) for the calendar year for purposes of determining the safe harbor factors is \$540x. This amount consists of the amounts paid on each scheduled distribution date during the calendar year (\$1135x, \$135x, and \$123x), plus the total amount paid to *J* as a result of *J*'s redemption of a trust interest (\$116x) (\$1,135x + \$135x + \$123x + \$116x = \$1,509x)—

(i) Increased by all cash held for distribution to TIHs as of December 31, 2007 (\$158x), which is the cash held as of December 31, 2007 (\$173x) reduced by the accrued but unpaid expenses as of December 31, 2007 (\$15x), and

(ii) Decreased by all amounts distributed during the calendar year but included in the year-end cash allocation factor from a prior year (\$12x); all redemp-

tion asset proceeds paid for the calendar year (\$115x); and all trust sales proceeds distributed during the calendar year (\$1,000x).

(2) *Step Two: Trustee determines factors that express the ratio of NMWHFIT income (other than OID) and expenses to the total amount of NMWHFIT distributions.* Trustee determines the factors for each item of income earned by Trust and each item of expense as follows:

(i) *Ordinary dividend income factor.* The ordinary dividend income factor is 0.3481, which represents the ratio of the gross amount of ordinary dividends (\$188x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(ii) *Qualified dividend income factor.* The qualified dividend income factor is 0.7407 which represents the ratio of the gross amount of qualified dividend income (\$400x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(iii) *Interest income factor.* The interest income factor is 0.0222, which represents the ratio of the gross amount of interest income (\$12x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(iv) *Expense factor.* The affected expenses factor is 0.0833, which represents the ratio of the gross amount of affected expenses paid by Trust for the calendar year (\$45x) to the total amount of NMWHFIT distributions for the calendar year (\$540x).

(3) *Step Three: Trustee determines adjustments for reconciling the total amount of NMWHFIT distributions with amounts paid to TIHs.* To enable requesting persons to determine the total amount of NMWHFIT distributions that are attributable to a TIH based on amounts actually paid to the TIH, the trustee must provide both a current year-end cash allocation factor and a prior year cash allocation factor.

(i) *Current year-end cash allocation factor.* The adjustment factor for cash held by Trust at year end

is 1.5960, which represents the cash held for distribution as of December 31, 2007 (\$158x) (the amount of cash held by Trust on December 31, 2007 (\$173x) reduced by accrued, but unpaid, expenses (\$15x)), divided by the number of trust interests outstanding at year-end (99).

(ii) *Prior Year Cash Allocation Factor.* The adjustment factor for distributions of year-end cash from the prior year is 0.1200, which represents the amount of the distribution during the current calendar year that was included in a year-end cash allocation factor for a prior year (\$12x), divided by the number of trust interests outstanding at the time of the distribution (100). The prior year cash distribution date is April 15, 2007.

(4) *Reporting sales and dispositions of trust assets—(i) Application of the de minimis test and the qualified NMWHFIT exception.* The aggregate fair market value of the assets of Trust as of January 1, 2007, was \$10,000x. During the 2007 calendar year, Trust received trust sales proceeds of \$1115x. Trust sales proceeds received by Trust for the 2007 calendar year equal 11.15% of Trust's fair market value as of January 1, 2007. Accordingly, neither the *de minimis* test or the qualified NMWHFIT exception is met for the calendar year.

(ii) *Information to be provided.* To satisfy the requirements of paragraph (f)(1) of this section with respect to sales and dispositions of Trust's assets, Trustee provides a list of dates on which trust assets were sold during the calendar year, and provides, for each date: the trust sales proceeds (per trust interest) received on that date; the trust sales proceeds distributed to TIHs (per trust interest) with respect to sales or dispositions on that date; the date those trust sales proceeds were distributed, and the ratio of the assets sold or disposed of on that day to all the assets held by Trust. Because Trust will terminate within 15 months of its start-up date, Trustee must use the fair market value of the assets as of the start-up date to determine the portion of Trust sold or disposed of on any particular date.

(5) *Reporting redemptions.* Because Trust is not required to make distributions at least as frequently as monthly, and Trust's start-up date is after February 23, 2006, the exception in paragraph (c)(2)(v)(C) of this section does not apply to Trust. To satisfy the requirements of paragraph (f)(1) of this section, Trustee provides a list of dates for which the redemption proceeds to be paid for the redemption of a trust interest was determined for the 2007 calendar year and the redemption assets proceeds paid for each date. During 2007, Trustee only determined the amount of redemption proceeds to be paid for the redemption of a

trust interest once, for December 10, 2007, and the redemption asset proceeds determined for that date was \$115x.

(6) *Reporting sales of trust interest.* Because Trust is not required to make distributions at least as frequently as monthly, and Trust's start up date is after February 23, 2006, the exception in paragraph (c)(2)(v)(C) of this section does not apply to Trust. Sponsor, in accordance with the trust agreement, provides Trustee with a list of dates on which sales on the secondary market occurred. To satisfy the requirements of paragraph (f)(1) of this section, Trustee provides requesting persons with a list of dates on which sales on the secondary market occurred and the amount of cash held for distribution per trust interest on each date. During 2007, two sales occurred on the secondary market. The first sale occurred on September 30, 2007, and the amount of cash held for distribution, per trust interest, on that date is \$1.35x. The second sale occurred on December 10, 2007, and the amount of cash held for distribution, per trust interest, on that date is \$1.00x.

(iii) *Brokers' use of information provided by Trustee—(A) Broker1 and Broker2 use the information furnished by Trustee under the safe harbor to determine that the following items are attributable to J, A, and S—*

With respect to J		
Ordinary Dividend Income		\$ 17.89x
Qualified Dividend Income		38.07x
Interest Income		1.14x
Affected Expenses		4.28x
Trust sales proceeds reported on Form 1099		108.13x
Redemption asset proceeds		
For redemption on December 10		115.00x
Sale asset proceeds		
For sale on September 30		114.00x
For sale on December 10		115.00x
With respect to A		
Ordinary Dividend Income		\$ 18.82x
Qualified Dividend Income		40.04x
Interest Income		1.20x
Affected Expenses		4.50x
Trust sales proceeds reported on Form 1099		111.62x
With respect to S		
Ordinary Dividend Income		\$ 19.54x
Qualified Dividend Income		41.58x
Interest Income		1.25x
Affected Expenses		4.68x
Trust sales proceeds reported on Form 1099		113.94x
With respect to J, A, and S (regarding the sales and dispositions executed by Trust during the calendar year)		
<u>Date</u>	<u>Trust sales proceeds received per trust interest</u>	<u>% of Trust sold</u>
June 15	\$10.0000x	20%
December 12	1.1616x	2%

(B) The brokers determine the information provided to J, A, and S as follows—

(1) *Step One: Brokers determine the total amount of NMWHFIT distributions attributable to J, A, and*

S. Broker1 determines that the total amount of NMWHFIT distributions attributable to J is \$51.39x

and the total amount of NMWHFIT distributions attributable to A is \$54.06x. Broker2 determines that the total amount of NMWHFIT distributions attributable to S is \$56.13x.

(i) To calculate these amounts the brokers begin by determining the total amount paid to J, A, and S for the calendar year—

(A) The total amount paid to J for the calendar year equals \$485.42x and includes the April 15, 2007, distribution of \$13.50x, the July 15, 2007, distribution of \$113.50x, the sales proceeds for the September 30, 2007, sale of \$115.35x, the October 15, 2007, distribution of \$11.07x, and the redemption proceeds of \$116x and sales proceeds of \$116x for the redemption and sale on December 10, 2007.

(B) The total amount paid to A for the calendar year equals \$139.30x and includes the April 15, 2007, distribution of \$13.50x, the July 15, 2007, distribution of \$113.50x and the October 15, 2007, distribution of \$12.30x.

(C) The total amount paid to S for the calendar year equals \$140.53x and includes the April 15, 2007, distribution of \$13.50x, the July 15, 2007, distribution of \$113.50x and the October 15, 2007, distribution of \$13.53x.

(ii) The brokers increase the total amount paid to J, A, and S by an amount equal to the current year-end cash allocation factor (1.5960) multiplied by the number of trust interests held by J (7), A (10), and S (12) as of December 31, 2007; that is for J, \$11.17x; for A, \$15.96x; and for S, \$19.15x.

(iii) The brokers reduce the amount paid to J, A, and S as follows—

(A) An amount equal to the prior year cash allocation factor (0.1200), multiplied by the number of trust interests held by J (10), A (10), and S (10) on the date of the prior year cash distribution; that is for J, A, and S, \$1.20x, each;

(B) An amount equal to all redemption asset proceeds paid to a TIH for the calendar year; that is, for J, \$115x;

(C) An amount equal to all sales asset proceeds attributable to the TIH for the calendar year; that is for J, \$229x (for the September 30, 2007, sale: \$115.35x - 1.35x (cash held for distribution per trust interest on that date)= \$114x; and for the December 10, 2007, sale: \$116x-1.00 (cash held for distribution per trust interest on that date)=\$115x);

(D) In the case of a purchasing TIH, an amount equal to the amount of cash held for distribution per trust interest at the time the TIH purchased its trust interest, multiplied by the number of trust interests purchased; that is for S, \$2.35x (\$1.35x with respect to the September 30, 2007, sale and \$1x with respect to the December 10, 2007, sale);

(E) All amounts of trust sales proceeds distributed to the TIH for the calendar year; that is for J, A, and S, \$100. (\$100 each, with respect to the June 15, 2007, sale of assets by Trust, and \$0 each, with respect to the December 12, 2007, sale of assets by Trust).

(2) *Step two: The brokers apply the factors provided by Trustee to determine the Trust's income and expenses that are attributable to J, A, and S.* The amounts of each item of income (other than OID) and expense that are attributable to J, A, and S are determined by multiplying the factor for that type of income or expense by the total amount of NMWHFIT distributions attributable to J, A, and S as follows:

(i) *Application of factor for ordinary dividends.* The amount of ordinary dividend income attributable to J is \$17.89x, to A is \$18.82x, and to S is \$19.54x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to J, A, and S (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for ordinary dividends (0.3481).

(ii) *Application of factor for qualified dividend income.* The amount of qualified dividend income attributable to J is \$38.07x, to A is \$40.04x, and to S is \$41.58x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to J, A, and S (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for qualified dividends (0.7407).

(iii) *Application of factor for interest income.* The amount of interest income attributable to J is \$1.14x, to A is \$1.20x, and to S is \$1.25x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to J, A, and S (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for interest (0.0222).

(iv) *Application of factor for affected expenses.* The amount of affected expenses attributable to J is \$4.28x, to A is \$4.50x, and to S is \$4.68x. The brokers determine these amounts by multiplying the total amount of NMWHFIT distributions attributable to J, A, and S (\$51.39x, \$54.06x, and \$56.13x, respectively) by the factor for affected expenses (0.0833).

(3) *Brokers reporting of sales and dispositions of trust assets—(i) Determining the amount of trust sales proceeds to be reported on Form 1099 for J, A, and S.* The amount of trust sales proceeds to be reported on Form 1099 with respect to J is \$108.13x, to A is \$111.62x, and to S is \$113.94x. To determine these amounts, the brokers aggregate the amount of trust sales proceeds attributable to J, A, and S for each date on which Trust sold or disposed of assets. The brokers determine the amount of trust sales proceeds to be reported with respect to the June 15, 2007, asset sale by multiplying the number of trust interests held by J (10), A (10) and S (10) on that date by the trust sales proceeds received per trust interest on that date (\$10x). The brokers determine the amount of trust sales proceeds to be reported with respect to the December 12, 2007, asset sale by multiplying the number of trust interests held by J (7), A (10) and S (12) on that date by the trust sales proceeds received per trust interest on that date (\$1.1616x).

(ii) *Information provided on the tax information statements furnished to J, A, and S.* The tax information statements furnished to J, A, and S must include the dates of each sale or disposition (June 15, 2007, and December 12, 2007); the amount of trust sales proceeds per trust interest received on those dates (\$10.00x and \$1.1616x, respectively); and, the percentage of Trust sold or disposed of on that date (20% and 2%, respectively).

(4) *Reporting redemptions.* Broker1 reports on Form 1099 and on the written tax information statement furnished to J that J received \$115x in redemption asset proceeds for the calendar year.

(5) *Reporting sales of trust interests on the secondary market.* Broker1 reports on J's two sales of trust interests. With respect to the sale on September 30, 2007, the sale asset proceeds equals \$114x (\$115.35x sale proceeds - 1.35x cash held for distribution on that date) and with respect to the sale on De-

ember 10, 2007, the sale asset proceeds equal \$115x (\$116x sale proceeds - \$1x cash held for distribution on that date). Broker1 reports these amounts on Form 1099 and on the tax information statement furnished to J.

(g) *Safe Harbor for certain WHMTs—(1) Safe harbor for trustee of certain WHMTs for reporting information—(i) In general.* The trustee of a WHMT that meets the requirements of paragraph (g)(1)(ii) of this section is deemed to satisfy paragraph (c)(1)(i) of this section, if the trustee calculates and provides WHFIT information in the manner described in this paragraph (g) and provides a statement to the requesting person giving notice that information has been calculated in accordance with this paragraph (g)(1).

(ii) *Requirements.* A WHMT must meet the following requirements—

(A) The WHMT must make monthly distributions of the income and principal payments received by the WHMT to its TIHs;

(B) All trust interests in the WHMT must represent the right to receive an equal *pro-rata* share of both the income and the principal payments received by the WHMT on the mortgages it holds (for example, a WHMT that holds or issues trust interests that qualify as stripped interests under section 1286 may not report under this safe harbor);

(C) The WHMT must—

(1) Report under this paragraph (g)(1) for the life of the WHMT; or

(2) If the WHMT has a start-up date before January 1, 2007, the WHMT must begin reporting under this paragraph (g)(1) as of January 1, 2007, and must continue to report under this paragraph for the life of the WHMT;

(D) The WHMT must calculate all items subject to the safe harbor consistent with the safe harbor;

(E) The assets of the WHMT must be limited to—

(1) Mortgages with uniform characteristics;

(2) Reasonably required reserve funds; and

(3) Amounts received on mortgages or reserve funds and held for distribution to TIHs; and

(F) The aggregate outstanding principal balance (as defined in paragraph (g)(1)(iii)(D) of this section) as of the

WHMT's start-up date must equal the aggregate of the original face amounts of all issued trust interests.

(iii) *Reporting WHMT income, expenses, non pro-rata partial principal payments, and sales and dispositions under the safe harbor.* A trustee must comply with each step provided in this paragraph (g)(1)(iii).

(A) *Step One: Determine monthly pool factors.* The trustee must, for each month of the calendar year and for January of the following calendar year, calculate and provide the ratio (expressed as a decimal carried to at least eight places and called a *pool factor*) of—

(1) The amount of the aggregate outstanding principal balance of the WHMT as of the first business day of the month; to

(2) The amount of the aggregate outstanding principal balance of the WHMT as of the start-up date.

(B) *Step Two: Determine monthly expense factors.* For each month of the calendar year and for each item of expense paid by the WHMT during that month, the trustee must calculate and provide the ratio (expressed as a decimal carried to at least eight places and called an *expense factor*) of—

(1) The gross amount, for the month, of each item of expense; to

(2) The amount that represents the aggregate outstanding principal balance of the WHMT as of the start-up date, divided by 1,000.

(C) *Step Three: Determine monthly income factors.* For each month of the calendar year and for each item of gross income earned by the WHMT during that month, the trustee must calculate and provide the ratio (expressed as a decimal carried to at least eight places and called an *income factor*) of—

(1) The gross amount, for the month, of each item of income, to

(2) The amount that represents the aggregate outstanding principal balance of the WHMT as of the start-up date, divided by 1,000.

(D) *Definition of aggregate outstanding principal balance.* For purposes of this paragraph (g)(1)(iii), the amount of the aggregate outstanding principal balance of a WHMT is the aggregate of—

(1) The outstanding principal balance of all mortgages held by the WHMT;

(2) The amounts received on mortgages as principal payments and held for distribution by the WHMT; and

(3) The amount of the reserve fund (exclusive of undistributed income).

(iv) *Reporting OID information under the safe harbor—(A) Reporting OID prior to the issuance of final regulations under section 1272(a)(6)(C)(iii)—(1)* For calendar years prior to the effective date of final regulations under section 1272(a)(6)(C)(iii), the trustee must provide, for each month during the calendar year, the aggregate daily accrual of OID per \$1,000 of aggregate outstanding principal balance as of the start-up date (daily portion). For purposes of this paragraph (g)(1)(iv), the daily portion of OID is determined by allocating to each day of the month its ratable portion of the excess (if any) of—

(i) The sum of the present value (determined under section 1272(a)(6)(B)) of all remaining payments under the mortgages held by the WHMT at the close of the month, and the payments during the month of amounts included in the stated redemption price of the mortgages, over

(ii) The aggregate of each mortgage's adjusted issue price as of the beginning of the month.

(2) In calculating the daily portion of OID, the trustee must use the prepayment assumption used in pricing the original issue of trust interests.

(B) *Reporting OID after the issuance of final regulations under section 1272(a)(6)(C)(iii).* [Reserved.]

(v) *Reporting market discount information under the safe harbor—(A) Reporting market discount information prior to the issuance of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3).* For calendar years prior to the effective date of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3), the trustee must provide—

(1) In the case of a WHMT holding mortgages issued with OID, the ratio (expressed as a decimal carried to at least eight places) of—

(i) The OID accrued during the month (calculated in accordance with paragraph (g)(1)(iv) of this section); to

(ii) The total remaining OID as of the beginning of the month (as determined under paragraph (g)(1)(v)(A)(3) of this section); or

(2) In the case of a WHMT holding mortgages issued without OID, the ratio (expressed as a decimal carried to at least eight places) of—

(i) The amount of stated interest paid to the WHMT during the month; to

(ii) The total amount of stated interest remaining to be paid to the WHMT as of the beginning of the month (as determined under paragraph (g)(1)(v)(A)(3) of this section).

(3) *Computing the total amount of stated interest remaining to be paid and the total remaining OID at the beginning of a month.* To compute the total amount of stated interest remaining to be paid to the WHMT as of the beginning of the month and the total remaining OID as of the beginning of the month, the trustee must use the prepayment assumption used in pricing the original issue of unit interests.

(B) *Reporting market discount information under the safe harbor following the issuance of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3).* [Reserved.]

(vi) *Reporting bond premium information under the safe harbor.* [Reserved]

(2) *Use of information provided by a trustee under the safe harbor—(i) In general.* If a trustee reports WHMT items in accordance with paragraph (g)(1) of this section, the information provided with respect to those items on the Forms 1099 required to be filed with the IRS under paragraph (d) of this section and on the statement required to be furnished to the TIH under paragraph (e) of this section must be determined as provided in this paragraph (g)(2).

(ii) *Reporting WHMT income, expenses, non pro-rata partial principal payments, and sales and dispositions under the safe harbor.* The amount of each item of income, the amount of each item of expense, and the combined amount of non pro-rata partial principal payments and trust sales proceeds that are attributable to a TIH for each month of the calendar year must be computed as follows:

(A) *Step One: Determine the aggregate of the non pro-rata partial principal payments and trust sales proceeds that are attributable to the TIH for the calendar year.* For each month of the calendar year that a trust interest was held on the record date—

(1) *Determine the monthly amounts per trust interest.* The trustee or middleman must determine the aggregate amount of non *pro-rata* partial principal payments and the trust sales proceeds that are attributable to each trust interest for each month by multiplying—

(i) The original face amount of the trust interest; by

(ii) The difference between the pool factor for the current month and the pool factor for the following month.

(2) *Determine the amount for the calendar year.* The trustee or middleman must multiply the monthly amount per trust interest by the number of trust interests held by the TIH on the record date of each month. The trustee or middleman then must aggregate these monthly amounts, and report the aggregate amount on the Form 1099 filed with the IRS and on the tax information statement furnished to the TIH as trust sales proceeds. No other information is required to be reported to the IRS or the TIH to satisfy the requirements of paragraphs (d) and (e) of this section under this paragraph (g) with respect to sales and dispositions and non *pro-rata* partial principal payments.

(B) *Step Two: Determine the amount of each item of expense that is attributable to a TIH—*(1) *Determine the monthly amounts per trust interest.* For each month of the calendar year that a trust interest was held on the record date, the trustee or middleman must determine the amount of each item of expense that is attributable to each trust interest by multiplying—

(i) The original face amount of the trust interest, divided by 1000; by

(ii) The expense factor for that month and that item of expense.

(2) *Determine the amount for the calendar year.* The trustee or middleman must multiply the monthly amount of each item of expense per trust interest by the number of trust interests held by the TIH on the record date of each month. The trustee or middleman then must aggregate the monthly amounts for each item of expense to determine the total amount of

each item of expense that is attributable to the TIH for the calendar year.

(C) *Step Three: Determine the amount of each item of income that is attributable to the TIH for the calendar year—*(1) *Determine the monthly amounts per trust interest.* For each month of the calendar year that a trust interest was held on the record date, the trustee or middleman must determine the amount of each item of income that is attributable to each trust interest by multiplying—

(i) The original face amount of the trust interest, divided by 1,000; by

(ii) The income factor for that month and that item of income.

(2) *Determine the amount for the calendar year.* The trustee or middleman must multiply the monthly amount of each item of income per trust interest by the number of trust interests held by the TIH on the record date of each month. The trustee or middleman then must aggregate the monthly amounts for each item of income to determine the total amount of each item of income that is attributable to the TIH for the calendar year.

(D) *Definitions for this paragraph (g)(2).* For purposes of this paragraph (g)(2)(ii)—

(1) The *record date* is the date used by the WHMT to determine the owner of the trust interest for the purpose of distributing the payment for the month.

(2) The *original face amount of the trust interest* is the original principal amount of a trust interest on its issue date.

(iii) *Reporting OID information under the safe harbor.* With respect to each month, trustee or middleman must determine the amount of OID that is attributable to each trust interest held by a TIH by multiplying—

(A) The product of the OID factor multiplied by the original face amount of the trust interest, divided by 1,000; by

(B) The number of days during the month that the TIH held the trust interest.

(iv) *Requirement to provide market discount information under the safe harbor.* The trustee or middleman must provide the

market discount information in accordance with paragraph (g)(1)(v) of this section to the TIH in, or with, the written statement required to be furnished to the TIH under paragraph (e) of this section.

(v) *Requirement to provide bond premium information under the safe harbor.* [Reserved]

(3) *Example of the use of the safe harbor for WHMTs.* The following example illustrates the use of the factors in this paragraph (g) to calculate and provide WHMT information:

*Example.* (i) *Facts—*(A) *In general.* X is a WHMT. X's start-up date is January 1, 2007. As of that date, X's assets consist of 100 15-year mortgages, each having an unpaid principal balance of \$125,000 and a fixed, annual interest rate of 7.25 percent. None of the mortgages were issued with OID. X's TIHs are entitled to monthly, *pro-rata* distributions of the principal payments received by X. X's TIHs are also entitled to monthly, *pro-rata* distributions of the interest earned on the mortgages held by X, reduced by expenses. Trust interests are issued in increments of \$5,000 with a \$25,000 minimum. The prepayment assumption used in pricing the original issue of trust interests is six percent. Broker holds a trust interest in X, with an original face amount of \$25,000, in street name, for C during the entire 2007 calendar year.

(B) *Trust events during the 2007 calendar year.* During the 2007 calendar year, X collects all interest and principal payments when due and makes all monthly distributions when due. One mortgage is repurchased from X in July 2007 for \$122,249, the mortgage's unpaid principal balance plus accrued, but unpaid, interest at the time. During November 2007, another mortgage is prepaid in full. X earns \$80 interest income each month from the temporary investment of X's funds pending distribution to the TIHs. All of X's expenses are affected expenses. The aggregate outstanding principal balance of X's mortgages, X's interest income, and X's expenses, for each month of the 2007 calendar year, along with the aggregate outstanding principal balance of X as of January 2008, are as follows:

Month	Principal Balance	Income	Expenses
January	\$12,500,000	\$75,601	\$5,288
February	12,461,413	75,368	5,273
March	12,422,593	75,133	5,256
April	12,383,538	74,897	5,240
May	12,344,247	74,660	5,244
June	12,304,719	74,421	5,207
July	12,264,952	74,181	5,191
August	12,102,696	73,200	5,122
September	12,062,849	72,960	5,106
October	12,022,762	72,718	5,089
November	11,982,432	72,474	5,073
December	11,821,234	71,500	5,006
January	11,780,829		

(ii) *Trustee reporting*—(A) Trustee, X's fiduciary, of this section by providing the following information comes within the safe harbor of paragraph (g)(1)(ii) to requesting persons:

Month	Pool Factor	Income Factor	Expense Factor
January	1.00000000	6.04806667	0.42304000
February	0.99691304	6.02941628	0.42184000
March	0.99380744	6.01065328	0.42048000
April	0.99068304	5.99177670	0.41920000
May	0.98753976	5.97278605	0.41952000
June	0.98437752	5.95368085	0.41656000
July	0.98119616	5.93446013	0.41528000
August	0.96821564	5.85603618	0.40976000
September	0.96502792	5.83677704	0.40848000
October	0.96182096	5.81740161	0.40712000
November	0.95859459	5.79790896	0.40584000
December	0.94569875	5.71999659	0.40048000
January	0.94246631		

(B) Trustee determines this information as follows:

(1) *Step One: Trustee determines monthly pool factors.* Trustee calculates and provides X's pool factor for each month of the 2007 calendar year. For example, for the month of January 2007 the pool factor is 1.0, which represents the ratio of—

(i) The amount that represents the aggregate outstanding principal balance of X (\$12,500,000) as of the first business day of January; divided by

(ii) The amount that represents the aggregate outstanding principal balance of X (\$12,500,000) as of the start-up day.

(2) *Step Two: Trustee determines monthly expense factors.* Trustee calculates and provides the expense factors for each month of the 2007 calendar year. During 2007, X has only affected expenses,

and therefore, will have only one expense factor for each month. For example, the expense factor for the month of January 2007 is 0.42304000, which represents the ratio of—

(i) The gross amount of expenses paid during January by X (\$5,288); divided by

(ii) The amount that represents the aggregate outstanding principal balance of X as of the start-up date (\$12,500,000) divided by 1,000 (\$12,500).

(3) *Step Three: Trustee determines monthly income factors.* Trustee calculates and provides the income factors for each month of the 2007 calendar year. During 2007, X has only interest income, and therefore, will have only one income factor for each month. For example, the income factor for the month of January 2007 is 6.04806667, which represents the ratio of—

(i) The gross amount of interest income earned by X during January (\$75,601); divided by

(ii) The amount that represents that aggregate outstanding principal balance of X as of the start-up date (\$12,500,000), divided by 1,000 (\$12,500).

(4) *Step Four: Trustee calculates and provides monthly market discount fractions.* Trustee calculates and provides a market discount fraction for each month of the 2007 calendar year using a prepayment assumption of 6% and a stated interest rate of 7.25%.

(iii) *Broker's use of the information provided by Trustee*—(A) Broker uses the information provided by Trustee under paragraph (g) of this section to determine that the following trust items are attributable to C:



Month	Aggregate Trust sales proceeds and Non <i>Pro-rata</i> Partial principal payments	Affected Expenses	Gross Interest Income
January	\$ 77.17	\$ 10.58	\$ 151.20
February	77.64	10.55	150.74
March	78.11	10.51	150.27
April	78.58	10.48	149.79
May	79.06	10.49	149.32
June	79.53	10.41	148.84
July	324.51	10.38	148.36
August	79.69	10.24	146.40
September	80.17	10.21	145.92
October	80.66	10.18	145.43
November	322.40	10.15	144.95
December	80.81	10.01	143.00
Total	\$1438.33	\$124.19	\$1774.22

(B) Broker determines this information as follows:

(1) *Step One: Broker determines the amount of the non pro-rata partial principal payments and trust sales proceeds received by X that are attributable to C for the 2007 calendar year.* Broker determines the amount of the non *pro-rata* partial principal payments and trust sales proceeds received by X that are attributable to C for each month of the 2007 calendar year. For example, for the month of January, Broker determines that the amount of principal receipts and the amount of trust sales proceeds that are attributable to C is \$77.17. Broker determines this by multiplying the original face amount of C's trust interest (\$25,000) by 0.00308696, the difference between the pool factor for January 2007 (1.00000000) and the pool factor for the following month of February 2007 (0.99691304). Broker reports the aggregate of the monthly amounts of non *pro-rata* partial principal payments and trust sales proceeds that are attributable to C for the 2007 calendar year as trust sales proceeds on the Form 1099 filed with the IRS.

(2) *Step Two: Broker applies the expense factors provided by Trustee to determine the amount of expenses that are attributable to C for the 2007 calendar year.* Broker determines the amount of X's expenses that are attributable to C for each month of the calendar year. For example, for the month of January 2007, Broker determines that the amount of expenses attributable to C is \$10.58. Broker determines this by multiplying the original face amount of C's trust interest (\$25,000), divided by 1,000 (\$25) by the expense factor for January 2007 (0.42304000). Broker determines the expenses that are attributable to C for the 2007 calendar year by aggregating the monthly amounts.

(3) *Step Three: Broker applies the income factors provided by Trustee to determine the amount of gross interest income attributable to C for the 2007 calendar year.* Broker determines the amount of gross interest income that is attributable to C for each month of the calendar year. For example, for the month of January 2007, Broker determines that the

amount of gross interest income attributable to C is \$151.20. Broker determines this by multiplying the original face amount of C's trust interest (\$25,000), divided by 1,000 (\$25), by the income factor for January 2007 (6.04806667). Broker determines the amount of the gross interest income that is attributable to C for the 2007 calendar year by aggregating the monthly amounts.

(4) *Step Four: Broker provides market discount information to C.* Broker provides C with the market discount fractions calculated and provided by the trustee of X under paragraph (g)(3)(ii)(B)(4) of this section.

(h) *Requirement that middlemen furnish information to beneficial owners that are exempt recipients and noncalendar-year beneficial owners—(1) In general.* A middleman that holds a trust interest on behalf of, or for the account of, either a beneficial owner that is an exempt recipient defined in paragraph (b)(7) of this section or a noncalendar-year beneficial owner, must provide to such beneficial owner, upon request, the information provided by the trustee to the middleman under paragraph (c) of this section.

(2) *Time for providing information.* The middleman must provide the requested information to any beneficial owner making a request under paragraph (h)(1) of this section on or before the later of the 44<sup>th</sup> day after the close of the calendar year for which the information was requested, or the day that is 28 days after the receipt of the request. A middleman must provide information with respect to a WHFIT holding an interest in another WHFIT, or a WHFIT holding an interest in a REMIC,

on or before the later of the 58<sup>th</sup> day after the close of the calendar year for which the information was requested, or the 42<sup>nd</sup> day after the receipt of the request.

(3) *Manner of providing information.* The requested information must be provided—

(i) By written statement sent by first class mail to the address provided by the person requesting the information;

(ii) By electronic mail provided that the person requesting the information requests that the middleman furnish the information by electronic mail and the person furnishes an electronic address;

(iii) At an Internet website of the middleman or the trustee, provided that the beneficial owner requesting the information is notified that the requested information is available at the Internet website and is furnished the address of the site; or

(D) Any other manner agreed to by the middleman and the beneficial owner requesting the information.

(4) *Clearing organization.* A clearing organization described in §1.163-5(c)(2)(i)(D)(8) is not required to furnish information to exempt recipients or non-calendar-year TIHs under this paragraph (h).

(i) [Reserved.]

(j) *Coordination with other information reporting rules.* In general, in cases in which reporting is required for a WHFIT under both this section and subpart B, part III, subchapter A, chapter 61 of the Inter-

nal Revenue Code (Sections 6041 through 6050T) (Information Reporting Sections), the reporting rules for WHFITs under this section must be applied. The provisions of the Information Reporting Sections and the regulations thereunder are incorporated into this section as applicable, but only to the extent that such provisions are not inconsistent with the provisions of this section.

(k) *Backup withholding requirements.* Every trustee and middleman required to file a Form 1099 under this section is a payor within the meaning of §31.3406(a)-2, and must backup withhold as required under section 3406 and any regulations thereunder.

(l) *Penalties for failure to comply.* Every trustee and middleman who fails to comply with the reporting obligations imposed by this section is subject to penalties under sections 6721, 6722, and any other applicable penalty provisions.

(m) *Effective date.* These regulations are applicable January 1, 2007. Trustees must calculate and provide trust information with respect to the 2007 calendar year and all subsequent years consistent with these regulations. Information returns required to be filed with the IRS and the tax information statements required to be furnished to trust interest holders after December 31, 2007 must be consistent with these regulations.

Par. 4. Section 1.6041-9 is added to read as follows:

*§1.6041-9 Coordination with reporting rules for widely held fixed investment trusts under §1.671-5.*

See §1.671-5 for the reporting rules for widely held fixed investment trusts (WHFIT) (as defined under that section). For purposes of section 6041, middlemen and trustees of WHFITs are deemed to have management and oversight functions in connection with payments made by the WHFIT.

Par. 5. Section 1.6042-5 is added to read as follows:

*§ 1.6042-5 Coordination with reporting rules for widely held fixed investment trusts under §1.671-5.*

See §1.671-5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

Par. 6. Section 1.6045-1 is amended by adding paragraph (d)(7) to read as follows:

*§1.6045-1 Returns of information of brokers and barter exchanges.*

\*\*\*\*\*

(d) \*\*\*

(7) *Coordination with reporting rules for widely held fixed investment trusts under §1.671-5 of this chapter.* See §1.671-5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

\*\*\*\*\*

Par. 7. Section 1.6049-4 is amended by adding paragraph (c)(3) to read as follows:

*§1.6049-4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.*

\*\*\*\*\*

(c) \*\*\*

(3) *Coordination with reporting rules for widely held fixed investment trusts under §1.671-5 of this chapter.* See §1.671-5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

\*\*\*\*\*

Par. 8. In §1.6049-5, paragraph (a)(6) is revised to read as follows:

*§1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.*

(a) \*\*\*

(6) Interest paid on amounts held by investment companies as defined in section 3 of the Investment Company Act (15 U.S.C. section 80-a) and on amounts paid on pooled funds or trusts. The interest to be reported with respect to a widely held fixed investment trust, as defined in §1.671-5(b)(22), shall be the interest earned on the assets held by the trust. See §1.671-5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

\*\*\*\*\*

Par. 9. Section 1.6050N-2 is added to read as follows:

*§1.6050N-2 Coordination with reporting rules for widely held fixed investment trusts under §1.671-5.*

See §1.671-5 for the reporting rules for widely held fixed investment trusts (as defined under that section).

**PART 301—PROCEDURE AND ADMINISTRATION**

Par. 10. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Par. 11. Section 301.6109-1 is amended by:

1. Revising the heading to paragraph (a)(2).

2. Revising paragraph (a)(2)(i).

The revisions read as follows:

*§301.6109-1 Identifying numbers.*

(a) \*\*\*

(2) *A trust that is treated as owned by one or more persons pursuant to sections 671 through 678—(i) Obtaining a taxpayer identification number—(A) General rule.* Unless the exception in paragraph (a)(2)(i)(B) of this section applies, a trust that is treated as owned by one or more persons under sections 671 through 678 must obtain a taxpayer identification number as provided in paragraph (d)(2) of this section.

(B) *Exception for a trust all of which is treated as owned by one grantor or one other person and that reports under §1.671-4(b)(2)(i)(A) of this chapter.* A trust that is treated as owned by one grantor or one other person under sections 671 through 678 need not obtain a taxpayer identification number, provided the trust reports pursuant to §1.671-4(b)(2)(i)(A) of this chapter. The trustee must obtain a taxpayer identification number as provided in paragraph (d)(2) of this section for the first taxable year that the trust is no longer owned by one grantor or one other person or for the first taxable year that the trust does not report pursuant to §1.671-4(b)(2)(i)(A) of this chapter.

\*\*\*\*\*

PART 602—OMB CONTROL  
NUMBERS UNDER THE PAPERWORK  
REDUCTION ACT

Authority: 26 U.S.C. 7805.

§602.101 OMB Control numbers.

Par. 12. The authority citation for part 602 continues to read as follows:

Par. 13. In §602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.671-5 * * * * *	1545-1540

Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved January 5, 2006.

Eric Solomon,  
*Acting Deputy Assistant  
Secretary (Tax Policy).*

(Filed by the Office of the Federal Register on January 23, 2006, 8:45 a.m., and published in the issue of the Federal Register for January 24, 2006, 71 F.R. 4001)

**Section 954.—Foreign Base Company Income**

26 CFR 1.954-2: Foreign personal holding company income.

**T.D. 9240**

**DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Part 1**

**Guidance Under Subpart F Relating to Partnerships**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing guidance under subpart F relating to partnerships. The temporary regulations add rules for determining whether a controlled foreign corporation's (CFC's) distributive share of partnership income is excluded

from foreign personal holding company income under the exception contained in section 954(i). These temporary regulations will affect CFCs that are qualified insurance companies, as defined in section 953(e)(3), that have an interest in a partnership and U.S. shareholders of such CFCs. The text of these temporary regulations also serves as the text of the proposed regulations (REG-106418-05) set forth in this issue of the Bulletin.

**DATES: Effective Date:** These regulations are effective January 17, 2006.

**Applicability Date:** For dates of applicability, see §1.954-2T(a)(5)(v).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Kate Y. Hwa, (202) 622-3840 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to 26 CFR Part 1 relating to the rules under section 954(i) of the Internal Revenue Code (Code) for determining whether a controlled foreign corporation's (CFC's) distributive share of partnership income is excluded from foreign personal holding company income under the exception contained in section 954(i).

**Need for Changes**

On July 23, 2002, the IRS and the Treasury Department published in the **Federal Register** (T.D. 9008, 2002-2 C.B. 335 [67 FR 48020]) final regulations under section 702 and subpart F. Since the publication of T.D. 9008, the IRS and the Treasury

Department have received several comments relating to the rule in the final regulations regarding the application of section 954(i) (special rule for income derived in the active conduct of an insurance business). These temporary regulations modify this rule in response to these comments.

**Explanation of Revisions**

Section 1.954-2(a)(5)(ii) sets forth special rules for determining the extent to which a CFC's distributive share of an item of income of a partnership is foreign personal holding company income. Section 1.954-2(a)(5)(ii)(C) addresses the exception contained in section 954(i) for income derived in the active conduct of an insurance business. Investment income that is excluded from insurance income as exempt insurance income under section 953(e) may nevertheless be treated as subpart F income if it falls within the definition of foreign personal holding company income under section 954(c) and the exception contained in section 954(i) is not satisfied. Section 1.954-2(a)(5)(ii)(C) provides that a CFC's distributive share of partnership income is excluded from foreign personal holding company income under the exception contained in section 954(i) only if the CFC is a qualifying insurance company, generally as defined in section 953(e)(3), and the partnership, of which the CFC is a partner, generates qualified insurance income within the meaning of section 954(i)(2), taking into account only the income of the partnership. Qualified insurance income is defined under section 954(i)(2) as income of a qualifying insurance company that is derived from investment of certain of its reserves or surplus if certain other requirements are satisfied.

Commentators expressed concern that §1.954-2(a)(5)(ii)(C) would never permit a CFC's distributive share of partnership income to qualify for the exclusion under section 954(i). Section 7701(a)(3) and the regulations provide that any entity that is an insurance company is treated as a corporation for Federal tax purposes. See Rev. Rul. 83-132, 1983-2 C.B. 270. Thus, any entity engaged in an active insurance business generally would be treated as a corporation and therefore would not be subject to the rule in §1.954-2(a)(5)(ii)(C).

Commentators also distinguished section 954(i) from the other exceptions to foreign personal holding company income in section 954, arguing that those exceptions do not provide the appropriate model for section 954(i). The special rules in the regulations regarding the exception to foreign personal holding company income contained in section 954(c), or the exception for income derived from the active conduct of a banking or similar business contained in section 954(h), turn on whether the income was generated from certain active business activities. In contrast, income that is excluded under section 954(i) may be generated from purely passive investments as long as the amount of the investments satisfies the requirements set forth in section 954(i). Commentators asked for clarification of the regulations to take into account the purposes of section 954(i).

In response to these comments, these temporary regulations provide that a CFC's distributive share of partnership income will qualify for the exception contained in section 954(i) if the CFC is a qualifying insurance company and the income of the partnership would have been qualified insurance income under section 954(i) if received by the CFC directly. Thus, whether the CFC partner's distributive share of partnership income is qualified insurance income is determined at the CFC partner level.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative

Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Kate Y. Hwa of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

### Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.954-2 is amended by revising paragraphs (a)(5)(ii)(C) and (a)(5)(iii) *Example 2*, to read as follows:

*§1.954-2 Foreign personal holding company income.*

(a) \* \* \*

(5) \* \* \*

(C) [Reserved]. For further guidance, see §1.954-2T(a)(5)(ii)(C).

\* \* \* \* \*

(iii) \* \* \*

*Example 2.* [Reserved]. For further guidance, see §1.954-2T(a)(5)(iii) *Example 2*.

\* \* \* \* \*

Par. 3. Section 1.954-2T is added as follows:

*§1.954-2T Foreign personal holding company income (temporary).*

(a)(1) through (5)(ii)(B) [Reserved]. For further guidance, see §1.954-2(a)(1) through (5)(ii)(B).

(C) A controlled foreign corporation's distributive share of partnership income will not be excluded from foreign personal holding company income under the exception contained in section 954(i) unless the controlled foreign corporation is a qualifying insurance company, as defined in section 953(e)(3), and the income of the partnership would have been qualified insurance income, as defined in section 954(i)(2), if received by the controlled foreign corporation directly. See §1.952-1(g)(1).

(iii) *Examples.* [Reserved]. For further guidance, see §1.954-2(a)(5)(iii).

*Example 1.* [Reserved]. For further guidance, see §1.954-2(a)(5)(iii) *Example 1*.

*Example 2.* D Corp, a Country F corporation, is a controlled foreign corporation within the meaning of section 957(a). D Corp is a qualifying insurance company, within the meaning of section 953(e)(3), that is engaged in the business of issuing life insurance contracts. D Corp has reserves of \$100x, all of which are allocable to exempt contracts, and \$10x of surplus, which is equal to 10 percent of the reserves allocable to exempt contracts. D Corp contributed the \$100x of reserves and \$10x of surplus to DJ Partnership in exchange for a 40-percent partnership interest. DJ Partnership is an entity organized under the laws of Country G and is treated as a partnership under the laws of Country G and Country F. DJ Partnership earns \$30x of investment income during the taxable year that is received from persons who are not related persons with respect to D Corp, within the meaning of section 954(d)(3). D Corp's distributive share of this investment income is \$12x. This income is treated as earned by D Corp in Country F under the tax laws of Country F and meets the definition of exempt insurance income in section 953(e)(1). This \$12x of investment income would be qualified insurance income, under section 954(i)(2), if D Corp had received the income directly, because the \$110x invested by D Corp in DJ Partnership is equal to D Corp's reserves allocable to exempt contracts under section 954(i)(2)(A) and allowable surplus under section 954(i)(2)(B)(ii). Thus, D Corp's distributive share of DJ Partnership's income will be excluded from foreign personal holding company income under section 954(i).

(iv) [Reserved].

(v) *Effective date.* [Reserved]. See §1.954-2(a)(5)(v).

Mark E. Matthews,  
Deputy Commissioner for  
Services and Enforcement.

Approved December 13, 2005.

Eric Solomon,  
Acting Deputy Assistant  
Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on January 13, 2006, 8:45 a.m., and published in the issue of the Federal Register for January 17, 2006, 71 F.R. 2462)

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## **Section 3406.—Backup Withholding**

A notice supplements the relief previously granted by the IRS with respect to taxpayers affected by Hurricanes Katrina and Rita. It provides relief from certain backup withholding obligations under section 3406 of the Code due to notification that a payee's

taxpayer identification number is incorrect. See Notice 2006-12, page 458.

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## **Section 7508A.—Authority to Postpone Certain Deadlines by Reason of Presidentially Declared Disaster or Terroristic or Military Actions**

A notice supplements the relief previously granted by the IRS with respect to taxpayers affected by Hur-

ricanes Katrina and Rita. Pursuant to the authority of section 7508A, the IRS postpones the time for certain payors to send notices to payees, and to begin imposing backup withholding on reportable payments to such payees. See Notice 2006-12, page 458.

# Part III. Administrative, Procedural, and Miscellaneous

## Relief From Certain Low-Income Housing Credit Requirements Due to Hurricane Rita

### Notice 2006-11

The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in the United States as a result of the devastation caused by Hurricane Rita. This relief is being granted pursuant to the Service's authority under § 42(n) and § 1.42-13(a) of the Income Tax Regulations.

#### BACKGROUND

On September 24, 2005, the President declared major disasters for the states of Louisiana and Texas as a result of Hurricane Rita. These declarations were made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Title 42 U.S.C. 5121-5206 (2000 and Supp. II 2002). Subsequently, the Federal Emergency Management Agency (FEMA) designated jurisdictions for Individual Assistance.

The states of Louisiana and Texas have requested that the Service grant relief similar to Notice 2005-69, 2005-40 I.R.B. 622 (applying to Hurricane Katrina which temporarily suspended certain requirements under § 42 of the Internal Revenue Code) to allow owners of low-income housing credit projects throughout the United States to provide temporary housing in vacant units to individuals who resided in jurisdictions designated for Individual Assistance in Louisiana and Texas and who have been displaced because their residences were destroyed or damaged as a result of the devastation caused by Hurricane Rita. The states of Louisiana and Texas have further requested that the temporary housing of the displaced individuals in low-income units without regard to income not cause the owners to lose low-income housing credits.

Based upon these requests and because of the widespread damage to housing caused by Hurricane Rita, the Service has determined that any housing credit

agency of a state or a possession of the United States (state housing credit agency) may provide approval to project owners in their respective state or possession to provide temporary emergency housing for individuals displaced by Hurricane Rita (displaced individuals) in accordance with this notice.

#### I. SUSPENSION OF INCOME LIMITATIONS

The Service has determined that it is appropriate to temporarily suspend certain income limitation requirements under § 42 for certain qualified low-income projects. The suspension will apply to low-income housing projects approved by the state housing credit agency, in which vacant units are rented to displaced individuals. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006 (temporary housing period).

#### II. STATUS OF UNITS

##### A. Units in the first year of the credit period

A displaced individual temporarily occupying a unit during the first year of the credit period under § 42(f)(1) will be deemed a qualified low-income tenant for purposes of determining the project's qualified basis under § 42(c)(1), and for meeting the project's 20-50 test or 40-60 test as elected by the project owner under § 42(g)(1). After the end of the temporary housing period established by the state housing credit agency (not to extend beyond September 30, 2006), a displaced individual will no longer be deemed a qualified low-income tenant.

##### B. Vacant units after the first year of the credit period

During the temporary housing period established by a state housing credit agency, the status of a vacant unit (that is, market-rate or low-income for purposes of § 42 or never previously occupied) after the first year of the credit period that becomes temporarily occupied by a

displaced individual remains the same as the unit's status before the displaced individual moves in. Displaced individuals temporarily occupying vacant units will not be treated as low-income tenants under § 42(i)(3)(A)(ii) (a low-income unit that was vacant before the effective date of this notice will continue to be treated as a vacant low-income unit even if it houses a displaced individual, a market rate unit that was vacant before the effective date of this notice will continue to be treated as a vacant market rate unit even if it houses a displaced individual, and a unit that was never previously occupied before the effective date of this notice will continue to be treated as a unit that has never been previously occupied even if it houses a displaced individual). Thus, the fact that a vacant unit becomes occupied by a displaced individual will not affect the building's applicable fraction under § 42(c)(1)(B) for purposes of determining the building's qualified basis, nor will it affect the 20-50 test or 40-60 test of § 42(g)(1). If the income of occupants in low-income units exceeds 140 percent of the applicable income limitation, the temporary occupancy of a unit by a displaced individual will not cause application of the available unit rule under § 42(g)(2)(D)(ii). In addition, the project owner is not required during the temporary housing period to make attempts to rent to low-income individuals the low-income units housing displaced individuals.

#### III. SUSPENSION OF NON-TRANSIENT REQUIREMENTS

The non-transient use requirement of § 42(i)(3)(B)(i) shall not apply to any unit providing temporary housing to a displaced individual during the temporary housing period determined by the state housing credit agency in accordance with section I of this notice.

#### IV. OTHER REQUIREMENTS

All other rules and requirements of § 42 will continue to apply during the temporary housing period established by the state housing credit agency. After the end of the temporary housing period, the applicable income limitations contained

in § 42(g)(1), the available unit rule under § 42(g)(2)(D)(ii), the non-transient requirement of § 42(i)(3)(B)(i), and the requirement to make reasonable attempts to rent vacant units to low-income individuals shall resume. If a project owner offers to rent to a displaced individual after the end of the temporary housing period, a displaced individual must be certified under the requirements of § 42(i)(3)(A)(ii) and § 1.42-5(b) and (c) to be a qualified low-income tenant. To qualify for the relief in this notice, the project owner must additionally meet all of the following requirements:

(1) *Major Disaster Area*

The displaced individual must have resided in a Louisiana or Texas jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Rita.

(2) *Approval of State Housing Credit Agency*

Project owners must obtain approval from their state housing credit agency to obtain the relief described in this notice. The state housing credit agency will determine the appropriate period of temporary housing for each project, not to extend beyond September 30, 2006.

(3) *Certifications and Recordkeeping*

To comply with the requirements of § 1.42-5, project owners are required to maintain and certify certain information concerning each displaced individual temporarily housed in the project, specifically: name, address of damaged residence, social security number, and a statement signed under penalties of perjury by the displaced individual that, because of damage to the individual's residence in a Louisiana or Texas jurisdiction designated for Individual Assistance by FEMA as a result of Hurricane Rita, the individual requires temporary housing. The owner must list the project on the FEMA registry for assistance under "Locate or List Rental Properties". The web address for listing the project is: [www.fema.gov](http://www.fema.gov).

The owner must also certify the date the displaced individual began temporary occupancy and the date the project will discontinue providing temporary housing as established by the state housing credit agency. The certifications and recordkeeping for displaced individuals must be maintained as part of the annual compliance monitoring process with the state housing credit agency.

(4) *Rent Restrictions*

Rents for the low-income units housing displaced individuals must not exceed the existing rent-restricted rates for the low-income units established under § 42(g)(2).

(5) *Protection of Existing Tenants*

Existing tenants in occupied low-income units cannot be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

EFFECTIVE DATE

This notice is effective September 24, 2005 (the date of the President's major disaster declarations as a result of Hurricane Rita).

PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1997.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this notice is in the section titled "OTHER REQUIREMENTS" and "(3) *Certifications and Recordkeeping*". This information is required to enable the Service to verify whether individuals are displaced as a result of Hurricane Rita and thus warrant temporary housing in vacant low-income housing credit units. The collection of information is required to obtain a benefit. The likely respondents are individuals, businesses, and nonprofit institutions.

The estimated total annual recordkeeping burden is 1,250 hours.

The estimated annual burden per recordkeeper is approximately 15 minutes. The estimated number of recordkeepers is 5,000.

Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this notice is Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Malgeri at (202) 622-3040 (not a toll-free call).

**Hurricanes Katrina and Rita  
- Relief From Certain Backup  
Withholding Obligations**

**Notice 2006-12**

PURPOSE

This notice supplements the relief previously granted by the Internal Revenue Service (IRS) under sections 6081, 6161, 6656, and 7508A of the Internal Revenue Code with respect to taxpayers affected by Hurricanes Katrina and Rita. Generally, section 3406 and the regulations thereunder impose on payors certain obligations with respect to backup withholding on reportable payments due to notification that the payee's taxpayer identification number (TIN) is incorrect. With respect to taxpayers affected by Hurricane Katrina or Rita, the IRS has determined that it is appropriate to postpone the time for payors to comply with these obligations.

Notice 2005-73, 2005-42 I.R.B. 723 (October 17, 2005) and News Releases IR-2005-112 and IR-2005-110 summarize certain relief granted with respect to Hurricanes Katrina and Rita, listing the counties and parishes eligible for Public Assistance or Individual and Public Assistance from the Federal Emergency Management Agency (FEMA) pursuant to Presidential disaster declarations. These counties and parishes constitute a "covered disaster area" within the meaning of section 301.7508A-1(d)(2).

The relief detailed below applies to all the counties and parishes that FEMA has designated or later designates as eligible for Individual or Individual and Public Assistance as a result of the devastation caused by Hurricane Katrina or Hurricane Rita.

BACKGROUND

Section 7508A provides the Secretary with authority to postpone the time

for performing certain acts under the internal revenue laws for a taxpayer the Secretary determines is affected by a Presidentially declared disaster, in respect of any tax liability of such taxpayer. Section 7508A(a)(2) also provides the Secretary with authority to disregard a period of up to one year in determining the amount of any interest, penalty, additional amount, or addition to the tax for an affected taxpayer. Pursuant to section 7508A(a) and section 301.7508A-1, a period of up to one year also may be disregarded in determining whether the performance of certain acts is timely under the internal revenue laws. Section 301.7508A-1(c)(1) lists several specific acts performed by taxpayers for which section 7508A relief may apply. Section 301.7508A-1(c)(1)(vii) allows the Secretary to specify additional acts to which section 7508A may apply.

Section 301.7508A-1(d)(1) describes several types of "affected taxpayers" eligible for relief under section 7508A. These taxpayers include any individual whose principal residence, and any business entity whose principal place of business, is located in the covered disaster area; any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in the covered disaster area; any individual whose principal residence, and any business entity whose principal place of business, is not located in the covered disaster area, but whose records necessary to meet a filing or payment deadline are maintained in the covered disaster area; any estate or trust that has tax records necessary to meet a filing or payment deadline in a covered disaster area; and any spouse of an affected taxpayer, solely with regard to a joint return of the husband and wife. Therefore, taxpayers located outside of the covered disaster area may qualify for relief.

Additionally, under section 301.7508A-1(d)(1)(vii), the IRS may determine that any other person is affected by a Presidentially declared disaster and therefore eligible for relief. Accordingly, with respect to Hurricane Katrina, the IRS previously determined that the following were affected taxpayers: (1) all workers assisting in the relief activities in the covered disaster areas, regardless of whether they are affiliated with recognized government or philanthropic organizations;

(2) any individual whose principal residence, and any business entity whose principal place of business, is not located in the covered disaster area, but whose tax professional/practitioner's offices are located in the covered disaster area; and (3) individuals, visiting the covered disaster areas, who were killed or injured as a result of Hurricane Katrina and its aftermath. For purposes of (3) above, the estate of an individual visiting the covered disaster who was killed as a result of the hurricane is also considered to be an affected taxpayer. See Notice 2005-73; see also News Release IR-2005-110 (similar relief for Hurricane Rita).

#### RELIEF FROM CERTAIN BACKUP WITHHOLDING OBLIGATIONS

Pursuant to section 3406(a)(1)(B) and (e)(2), and section 31.3406(d)-5, payors must backup withhold on certain reportable payments after receiving notification from the IRS that the payee's TIN is incorrect ("incorrect TIN notice," also known as a CP 2100 or 2100A notice). The regulations require the payor to send a notice (commonly referred to as a "B" notice) to the payee within 15 business days of receiving an incorrect TIN notice from the IRS, requesting a signed Form W-9, and to backup withhold on reportable payments after 30 business days if no Form W-9 is received. If the payor has received two incorrect TIN notices from the IRS with respect to an account within 3 years, it must also send a notice to the payee (commonly referred to as a second "B" notice) within 15 business days, but the payee must provide validation of the TIN from either the Social Security Administration or the IRS within 30 business days in order to avoid backup withholding. See also Rev. Proc. 93-37, 1993-2 C.B. 477, for specific requirements with respect to these notices.

The IRS annually sends out incorrect TIN notices to payors beginning in September. The IRS is aware that payors whose principal place of business is located in the covered disaster area may have difficulty meeting their obligations to send B notices and to backup withhold. These payors are "affected taxpayers." See Notice 2005-73; News Release IR-2005-110. Other payors, who are located outside the covered disaster area and

are not affected taxpayers, may need to send B notices to payees who are affected taxpayers. Since many of these affected taxpayers are temporarily displaced, payors may have difficulty locating those payees. The IRS is also aware that since Hurricanes Katrina and Rita, mail service has been disrupted in the covered disaster area. Given these considerations, the IRS has determined that it is appropriate, with respect to affected taxpayers, to postpone the time for payors to send B notices and begin backup withholding. See § 301.7508A-1(c)(1)(vii).

Therefore, incorrect TIN notices sent out by the IRS on or after August 29, 2005, and before February 28, 2006, to payors who are affected taxpayers or to payors with respect to payees that the payors reasonably believe are affected taxpayers should be treated as if they were dated February 28, 2006. This will provide additional time for payors to update records as necessary and comply with the requirement to send B notices.

Accordingly, payors whose principal place of business is located within the covered disaster area or who are otherwise included within the definition of affected taxpayers, as described in Notice 2005-73, and who have received incorrect TIN notices dated on or after August 29, 2005, and before February 28, 2006, should treat such notices as if received on February 28, 2006 for purposes of complying with the backup withholding rules set forth in section 3406 and the regulations thereunder, regardless of the date shown on the incorrect TIN notice. Thus, the time for a payor to send a B notice to a payee, and to commence backup withholding on reportable payments, is postponed. A payor must send its B notices during the 15 business day period beginning after February 28, 2006, and ending on March 21, 2006, and must begin backup withholding on reportable payments, if necessary, after the close of the 30<sup>th</sup> business day after February 28, 2006 (April 11, 2006). Any such payors who have already mailed their B notices should not begin backup withholding on reportable payments unless the payees have not furnished their TINs in the manner required by April 11, 2006. If such payors have already mailed their B notices and commenced backup withholding, they should cease backup withholding. Payors should attempt to up-



date their payee information and resend B notices to payees (unless the payees have already furnished the required response to the B notices) after February 28, 2006.

Payors whose principal place of business is located outside of the covered disaster area and who are not otherwise included within the definition of affected taxpayer who have received incorrect TIN notices from the IRS dated on or after August 29, 2005, and before February 28, 2006, should treat such incorrect TIN notices as if received on February 28, 2006, only with respect to payees who they reasonably believe are affected taxpayers, for purposes of complying with the backup

withholding rules set forth in section 3406 and the regulations thereunder, regardless of the date shown on the notice. Accordingly, the time for mailing B notices to such payees, and commencing backup withholding on reportable payments to such payees, is postponed as described above. Payors who have already mailed B notices to such payees should not begin backup withholding on reportable payments unless the payees have not furnished their TINs in the manner required by April 11, 2006. Payors who have already mailed B notices to such payees and commenced backup withholding should cease backup withholding. Payors should

attempt to update their payee information and resend B notices to payees located in the affected area (unless the payees have already furnished the required response to the B notices) after February 28, 2006.

#### DRAFTING INFORMATION

The principal author of this notice is Nancy Rose of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, contact Nancy Rose at (202) 622-4940 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

### Guidance Under Subpart F Relating to Partnerships

#### REG-106418-05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9240) that provide rules for determining whether a controlled foreign corporation's (CFC's) distributive share of partnership income is excluded from foreign personal holding company income under the exception contained in section 954(i). The regulations will affect CFCs that are qualified insurance companies, as defined in section 953(e)(3), that have an interest in a partnership and U.S. shareholders of such CFCs. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by April 17, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-106418-05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-106418-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-106418-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kate Y. Hwa, (202) 622-3840;

concerning submissions of comments, Treena Garrett, (202) 622-3401 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR Part 1) relating to the rules under section 954(i) of the Internal Revenue Code (Code) for determining whether a controlled foreign corporation's (CFC's) distributive share of partnership income is excluded from foreign personal holding company income under the exception contained in section 954(i). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

##### Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

##### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be

available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

The IRS and the Treasury Department have become aware of possible uncertainty regarding the application of section 956 in certain transactions involving foreign partnerships. The IRS and the Treasury Department therefore also request comments regarding the proper application of section 956 in the case of a loan by a CFC to a foreign partnership in which one or more partners are domestic corporations that are U.S. shareholders of the CFC. Specifically, comments are requested regarding the circumstances, if any, under which the loan to the foreign partnership should be considered to be the obligation of such partners and, thus, U.S. property for purposes of section 956. The IRS and the Treasury Department are particularly interested in the relevance of (1) the consistent application of section 956 to CFC loans to foreign partnerships, domestic partnerships, foreign branches, and disregarded entities of U.S. shareholders; (2) the foreign partnership's status as a foreign person; (3) the partners' liability for the partnership's debt under local foreign law; (4) the use of the loan proceeds in business activities located inside or outside of the United States; and (5) the fact that the CFC earnings loaned to the partnership would not have been deferred had they been earned by the partnership.

##### Drafting Information

The principal author of these regulations is Kate Y. Hwa of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

##### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

(Filed by the Office of the Federal Register on January 13, 2006, 8:45 a.m., and published in the issue of the Federal Register for January 17, 2006, 71 F.R. 2496)

Paragraph 1. The authority citation for 26 CFR Part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.954-2 is amended by revising paragraphs (a)(5)(ii)(C) and (a)(5)(iii) *Example 2* to read as follows:

§1.954-2 *Foreign personal holding company income.*

(a) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(C) [The text of the proposed amendment to §1.954-2(a)(5)(ii)(C) is the same as the text for §1.954-2T(a)(5)(ii)(C) published elsewhere in this issue of the Bulletin.]

(iii) \* \* \*

*Example 2.* [The text of proposed §1.954-2(a)(5)(iii) *Example 2* is the same as the text of §1.954-2T(a)(5)(iii) *Example 2* published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*

**Deletions From Cumulative  
List of Organizations  
Contributions to Which  
are Deductible Under Section  
170 of the Code**

**Announcement 2006-13**

The name of an organization that no longer qualifies as an organization described in section 170(c)(2) of the Internal Revenue Code of 1986 is listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was

in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on February 13, 2006, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Flo-Ro Management  
Florissant, MO

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.

ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.

PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.